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[1] BEFORE THE NATIONAL LABOR RELATIONS BOARD Twenty-Third Region

In the Matter of:

INTERNATIONAL ASSOCIATION OF HEAT AND FROST INSULATORS AND ASBESTOS WORKERS, AFL-CIO

LOCAL 22, INTERNATIONAL ASSOCIATION OF HEAT AND FROST INSULATORS AND ASBESTOS WORKERS, AFL-CIO

LOCAL 113, INTERNATIONAL ASSOCIATION OF HEAT AND FROST INSULATORS AND ASBESTOS WORKERS, AFL-CIO

(ARMSTRONG CONTRACTING AND SUPPLY CORPORATION)

(JOHNS-MANVILLE SALES CORPORATION)

(THORPE PRODUCTS COMPANY)

(TECHALLOY COMPANY, INCORPORATED)

and Case No. 23-CC-133

HOUSTON INSULATION CONTRACTORS
ASSOCIATION

7620 Federal Office Building, 515 Rusk Avenue, Houston, Texas, Tuesday, October 22, 1963. The above-entitled matter came on for hearing, pursuant to notice, at 10:00 o'clock, a. m.

BEFORE:

JOHN F. FUNKE, Esq., Trial Examiner.

[2] APPEARANCES:

ARTHUR SAFOS, Esq., 6617 Federal Office Building, 515 Rusk Avenue, Houston, Texas, appearing as counsel for General Counsel.

VINSON, ELKINS, WEEMS & SEARLS, BY: W. D. DEAKINS, JR., Esq.
2100 First City National
Bank Building, Houston,
Texas, appearing on behalf of the Charging Party.

SHERMAN, DUNN & SICKLES, BY: JOSEPH A. SICKLES, Esq., 1200 15th Street, N. W., Washington 5, D. C., appearing on behalf of International Association of Heat and Frost Insulators and Asbestos Workers, AFL-CIO, Respondent.

COMBS & MITCHELL;
BY: THOMAS J. MITCHELL, Esq.,
State National Building,
Houston, Texas, appearing
on behalf of Locals 22 and 113,
International Association of
Heat and Frost Insulators and
Asbestos Workers, AFL-CIO,
Respondents.

[4]

PROCEEDINGS

[16] FRANK C. SHELDEN, JR.

was called as a witness by and on behalf
of the General Counsel ...

THE WITNESS:

Frank C. Shelden, S-h-e-l-d-e-n, 5440 Polk Avenue, Houston, Texas.

DIRECT EXAMINATION

Q (By Mr. Safos) Mr. Shelden, by whom are you employed? A J. T. Thorpe Company.

Q How long have you been an employee of Thorpe? A Fifteen years.

Q In what capacity are you employed by Thorpe?

A President.

Q What is the nature of the business of Thorpe at Houston, Texas? A We are in the business of insulation supplies are made to insulation contractors and as well as in refractory contracting and sales of in-

dustrial equipment.

[17] Q To whom are these sales made that you speak of? A Sales of industrial insulation supplies are made to insulation contractors and to insulation users in the Texas-Louisiana Gulf Coast area.

Q Who are some of the customers of Thorpe in this area? A Specifically some of the customers are insulation contractors, such as Johns-Manville and Armstrong, as well as insulation users, such as Humble Oil, American Oil.

Q Well, you mentioned Armstrong. What is the relation, the business relation between Thorpe and Armstrong? A On occasion Thorpe has purchased materials from Armstrong and sold materials to Armstrong.

TRIAL EXAMINER:

For how long, how long a period of time, several years?

THE WITNESS:

Several years.

-mani- to keatelight.

Q (By Mr. Safos) Can we say from January of 1960 on, is that — A Uh-huh.

Q I don't think he can get your answer. A Yes, from January 1960 on.

Q What is the business relationship of Johns-Manville, as between Johns-Manville and Thorpe? A A Thorpe is a distributor of Johns-Manville industrial insulations.

Q Well, let's take a period within the last year.

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What

[18] insulation products were sold by Thorpe to Armstrong? A Without checking our files, I can't specifically answer individual items. This is available, if it's of interest.

I know that on one occasion we did sell Armstrong some fabricated mitered fittings.

Q Can you recall of any other commodities that were sold to Armstrong? A There may or may not have been. I have not checked our records. I would imagine that there were other items sold to Armstrong, but I haven't —

Q What is meant by the term mitered fittings? A mitered fitting is an insulation item that is used to cover something other than a straight piece of pipe in a pipe line, and this is made by taking standard insulation pipe covering and cutting it on a bias or miter and then gluing it together or sticking it together so that it will conform to the fitting that you are trying to shape it to.

Q Are these mitered fittings available for purchase by any of your customers? A Any of our customers, that is correct.

Q If you can tell us, please, these fittings, these mitered fittings that you have referred to, which were sold by Thorpe to Armstrong, what project were they used on by

[19] Armstrong? A At the time they were purchased by Armstrong, we were not told where they would go. An order was issued for these fittings and we were advised that Armstrong would call for them when they were ready.

Q (By Mr. Safos) As president of Thorpe would your records indicate where they went to, what jobs they went to? A No, they were picked up by Armstrong.

Q Can you estimate a date as to when this pick-up was made? A I can give you the date. August 6, 1963. Also on August 2, 1963; those two dates these materials were picked up.

Q That is August 2 and August 6? A That's correct.

Q Have mitered fittings been purchased from Thorpe by any other insulation employers in the Houston area?

[20] A Yes, Johns-Manville used to purchase quite a number of these items from us prior to putting in their own shop, and we still sell to other contractors that don't have their own shops, Fluor Corporation, for example.

Q What labor organization, if any, represents as bargaining agent the employees of Thorpe? A None.

Q With reference to the mitered fittings, what form of identification, if any, is used on these items as to whether or not, indicating as to whether or not they are union made? A None.

Q Is there any identification used on any items that are fabricated or manufactured by Thorpe? A Yes, some of the items we manufacture we put in our own boxes, where a brand name is involved, where a specific item is sold under a trade name.

Q Do these identifications, these tags, make reference to whether or not the commodity is or is not union made? A No.

Q As to that matter, whether there is any identification as to whether they are union or not union made, is there any marking or markings on the com-

modities sold, made, manufactured and sold by Thorpe? A On occasion we have made fittings and these fittings

[21] were made by members of Local 22 and stickers or decals, as you say, were affixed.

Q Were there any such decals or stickers on the mitered fittings sold to Armstrong? A No.

Q That is, on the two dates of pick-up of August 2 and August 6, 1963? A No.

CROSS EXAMINATION

[22] Q (By Mr. Sickles) Would you identify this item? A That is a so-called insulation mitered fitting.

TRIAL EXAMINER:

Which you do manufacture, is that correct?

THE WITNESS:

This is made by our company, yes.

[23] TRIAL EXAMINER: Yes.

Q (By Mr. Sickles) Not necessarily this one. A Not that — not necessarily that particular one.

Q Now, I will put a couple of other items on the desk in front of you. How do you make that or how does your company make that particular end product? A This item is fabricated from standard pipe covering, which comes in a form like this, only in long lengths, several feet long.

This standard pipe covering is then sliced on a bias or miter into shapes like are shown here, and then on the shapes are stuck or glued together to something like that (indicating).

Q Well, a piece of pipe covering, which is for covering of a straight pipe, is roughly how long? A Three feet, usually

Q And how many sections does it come in? A Well, it varies. Normally it comes in two sections to cover one piece of pipe.

Q By a top and a bottom section? A Yes, like that (illustrating).

Q All right.

This product that I hold in my hand, which you have identified as a mitered fitting cover, this is not something that is manufactured by machine, is this correct?

[24] A As such, that's correct, insofar as our own operation is concerned, that is correct.

TRIAL EXAMINER:

It's cut by hand?

THE WITNESS:

That's correct. It's cut by a saw, actually.

TRIAL EXAMINER:

Saw, yes. A man operates the saw?

THE WITNESS:

That's right.

Q (By Mr. Sickles) Now, I think we established on direct examination, Mr. Shelden, that your pipe covering material, the manufactured item, is not made by any employee who is represented by a union? A That is correct.

Q Now, to your knowledge, only if you know, are there any manufacturers of pipe covering material whose employees are represented by members of any asbestos worker local? A I don't have knowledge of that.

Q Have you sold straight sections of pipe covering to Armstrong in the recent past? A I don't have knowledge of that. That information is available but I personally don't have the knowledge of that.

[25] Q (By Mr. Sickles) Since January of 1960, I believe you stated, only one occasion do you know of have you sold mitered fitting covers to Armstrong? A That is correct.

Q And do you know how that came about? Were you solicited by the company? Did you solicit them? A We received a telephone call and a phoned in purchase

[26] order for these items.

Q Have you ever discussed, other than that one phone call, have you ever discussed the fitting, mitered fitting covers, with any representative of Armstrong? A Not me personally.

Q Do you know Mr. John Zeller with Armstrong? A No, I do not.

Q Is it the normal course of your business to sell manufactured products rather than such things as mitered fittings? A Well, I don't know what you.

mean by the word normal. The majority of our business is the selling of manufactured products.

\$\textbf{Q}\$ (By Mr. Mitchell) In view of your statement that you just sold on one occasion these mitered fittings to Armstrong, would it be correct or incorrect, then, to state, as the General Counsel has in his complaint, I am reading from Paragraph 3(a), that in the course of its business Thorpe regularly sells mitered fittings to Armstrong? A Incorrect.

MR. MITCHELL:

I don't have any further questions.

[30]

H. W. COOK

was called as a witness by and on behalf of the General Counsel . . .

THE WITNESS:

H. W. Cook, C-o-o-k, 9519 Carousel Lane, Houston.

DIRECT EXAMINATION

Q (By Mr. Safos) By whom are you employed, Mr. Cook? A Techalloy Company, Incorporated.

Q How long have you been an employee of Techalloy?

[31] A About four years.

Q In what capacity are you employed?

A I am the District Sales Manager.

Q. What is the nature of the business of Techalloy of Houston, Texas? A We are a manufacturer and a fabricator of stainless steel, the high nickel alloys, and aluminum wire rod and strip.

In the case of the insulation industry, we manufacture insulation strapping materials, bands, tie wire, poultry netting, seals, expander band, breather springs, and the like.

Q Who are some of your customers in the Houston area? A Well, our, all of our customers are in general the contractors, such as Johns-Manville, Armstrong, B & B Engineering, Precision Insulation.

Q Let's take Johns-Manville.

What is the business relationship of Techalloy with Johns-Manville? A We do and we have furnished them with insulation strapping materials, the materials I just listed for you.

Q Would you define the term insulation strapping material? A Yes, an insulation strapping material, or device, is either a band with a seal affixed on one end which is used

[32] to secure pipe covering or other forms of insulation around a pipe or vessel or other types of equipment.

It is nothing more than a securement.

Q How long has the business relationship between Techalloy and Johns-Manville existed? A Well, I

have been down here four years and we have been doing business during that time and I am sure prior to that time.

Q Now, getting back to the business relationship, what products, if you know, please, sir, that are fabricated or manufactured by Techalloy here at Houston have been sold to Johns-Manville at Houston, say within the period of the last year? A Well, let me ex-

plain my mode of operation. Maybe this will make the point clear for the Trial Examiner.

We, first of all, in locating potential orders, make it our business to see the drawings, the plans and specifications of a particular job that may be up for competitive bidding. And on this particular drawing it will indicate the pipe diameters or the vessel diameters.

In some cases it is feasible, economically, for us to offer material cut to a specific length for pipe covering, for example.

In the particular case involved here, I had located the drawings for this American Oil feed line, and it was readily obvious that eighteen thousand feet of pipe of one diameter certainly warranted pre-cut bands, and it was my suggestion to Johns-Manville that they consider our bid on that basis. We have done this before. We are doing it now. And we are going to do it in the future.

[36] Q (By Mr. Safos) Now, we were also discussing, I believe, the specific project for which these bands were purchased. Now, will you tell us about that? A Yes, there were three phases to this project. There were the two large —

Q Well, where is it located? A It's in Texas City, Texas.

Q What does it consist of? A It's the American Oil ammonia plant. There were three phases, two large storage tanks, the ammonia plant, itself, and the feed line.

Q All right. A Mundet Cork insulated the two large storage tanks.

[37] American Insulation in Beaumont, Texas, insulated the ammonia plant equipment, itself, and Johns-Manville insulated the feed line, and we furnished materials on all three jobs.

[39] Q (By Mr. Safos) What form of identification, if any, was used on the pre-cut stainless steel bands? A Just a tag with Techalloy on it and the description of the material, with thickness and length.

Q Was there any form of identification, if you know, please, sir, which indicated whether or not they were union made?

[40] A No.

Q What labor organization, if any, represents as bargaining agent the employees of Techalloy in the manufacture of this commodity? A There is no labor organization.

CROSS EXAMINATION

Q (By Mr. Mitchell)

[42] Q Now, I want to ask you this question,
Mr. Cook.

Have you ever, in your experience with the Techalloy Company, been confronted with a situation where you have supplied your manufactured products to any insulation contractor, such as Johns-Manville, and had your manufactured products boycotted by employees of Johns-Manville or any other contractor?

[43] Q (By Mr. Mitchell) Have any of your manufactured products as distinguished from your manufactured and prefabricated products—

TRIAL EXAMINER:

All right. I see it now. Have they?

[44] Q (By Mr. Mitchell) — have they run into any kind of boycott insofar as Johns-Manville or any other contractor; insulation contractor, is concerned in this area in the past ten years? A No, the only instance is this one that we have in mind at the moment.

Q (By Mr. Mitchell) All right. Since the date of this charge, or let's just say since July of 1963, this year, I presume, Mr. Cook, that you have continued

to supply stainless steel and high nickel alloy products to Johns-Manville as well as other insulation contractors in this area? A That's correct.

Q Manufactured products? A That's correct.

Q As distinguished from prefabricated and manufactured products? A Yes, that's correct.

[45] TRIAL EXAMINER:

We have got it narrowed down now.

Q (By Mr. Mitchell) And have you, since July of 1963, run into any kind of boycott of your products, your manufactured products, by any of the employees?

MR. SAFOS:

This is a very narrow period of time, from what date, from the beginning of July up to now. Well, now, of course, that includes September 13, 1963, at which time there was an injunction.

TRIAL EXAMINER:

All right, up to September 13 put the cut-off date, then.

[46] Q (By Mr. Mitchell) From July of 1963

TRIAL EXAMINER:

, September 13.

Q (By Mr. Mitchell) — September 13, 1963, I presume, Mr. Cook, that you have supplied different in-

sulation

[47] contractors in this area, Johns-Manville included, with your manufactured products?

A That is correct.

TRIAL EXAMINER:

And there has been no boycott of them, has there?

THE WITNESS:

No, sir.

U

[49] FRANK C. SHELDEN, JR.

recalled as a witness by and on behalf of the General Counsel, ...

FURTHER CROSS EXAMINATION

Q (By Mr. Sickles) Whether or not you have sold straight line asbestos pipe covering, whatever material it may be, to Armstrong. A There were six sales made in 1963, fifteen sales in 1962, nine sales in 1961.

The quantities varied from orders amounting to approximately ten dollars up to a maximum of a thousand dollars.

[50] Q All right.

And the other area that you were to find out was whether or not there have been instances of union decals having been placed on your mitered fittings subsequent to the time that Thorpe ceased being an insulation contractor. A That is correct.

There were two major instances, one, [51] a large job that Fluor Corporation had with American Oil in Texas City to build a new alkylation unit in 1961, where a large quantity of these type items were sold to Fluor by us, made in our shop by union asbestos workers, upon which were affixed decals stating that they were union made.

Another instance in 1961 to Singmaster & Breyer, who were the general contractors for a new plant being built in Beaumont, Texas, for the Houston Chemical Company, again where a large quantity of these type fittings were sold by us to Singmaster & Breyer, having been fabricated in our shop by union asbestos workers, and a decal affixed thereon.

There were others, but those were the two major ones.

Q And that was in 1961? A That's correct.

Q And when was it you ceased being an insulation contractor? A December 31, 1960.

Q And what was the specific dates of these in 1961, if you will? A Well, it was over a rather extended period of time. I mean, these were fairly large jobs and this might have gone on for quite a period.

Q Well, the collective bargaining agreement in effect at that time extended through June of 1961, did it not?

[52] A I have no idea.

Q Do you recall if you advised Local 22 that you were no longer an insulation contractor? A I don't have any knowledge of so advising.

Q Now, the one other item that you mentioned, that these decals said they were union made. Do you

know that they said they were union made? A No, no, I do not know that.

REDIRECT EXAMINATION

Q (By Mr. Deakins) Do you know where the decals came from that were placed on these materials, Mr. Shelden? A They were supplied by the asbestos worker who was working in our shop.

Q And how did you know that he was a member of the union? A We had hired him previously when we were an insulation contractor.

Q And he put those on, himself, is that right? A That is correct.

Q Now, did he put those on any work that was performed by persons who were not members of the union? A No.

[55] C. E. FOSTER

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

TRIAL EXAMINER:

Give your name and address to the reporter, please.

THE WITNESS:

C. E. Foster, 7010 Leader Street, Houston, Texas.

[56] DIRECT EXAMINATION

Q (By Mr. Safos) Mr. Foster, by whom are you employed? A I am employed by Armstrong Contracting and Supply Corporation.

Q And in what capacity, please, sir? A As

branch manager in Houston.

Q How long have you been working for Armstrong? A Thirteen years.

Q Mr. Foster, what is the business relationship between Armstrong and Thorpe Products Company? A Armstrong purchases materials from Thorpe Products Company from time to time and Thorpe purchases materials from Armstrong from time to time.

Q What specific products are purchased from Thorpe? A We have purchased pipe covering, pre-fabricated fitting covers and prefabricated blankets.

Q Prefabricated fitting covers, is this the same term referred to as mitered fittings? A As a mitered fitting, yes.

TRIAL EXAMINER:

You saw the material that was being examined here before?

THE WITNESS:

Right.

TRIAL EXAMINER:

That is the type of material you have purchased from Thorpe?

THE WITNESS:

Right.

[57] TRIAL EXAMINER: Is that correct?

THE WITNESS:

That's correct.

TRIAL EXAMINER:

And that is what you call prefabricated?

THE WITNESS:

Right.

Q (By Mr. Safos) How long has this business relationship with Thorpe been in existence? A Since the Thorpe Company began, I think in 1961.

Q What construction insulation work is Armstrong engaged in currently? A We have several projects, but one that we have at Victoria, Texas, for the Lummus Company at the duPont plant.

TRIAL EXAMINER:

Is that the project which is the concern of this proceeding?

THE WITNESS:

Yes.

Q (By Mr. Safos) How long has this business reof? A This is an ammonia plant installation for du-Pont, which consists of the fabrication and erection of various vessels and the insulation of these vessels and piping.

TRIAL EXAMINER:

Did you purchase materials from Thorpe in connection with this project?

THE WITNESS:

Yes, we did.

TRIAL EXAMINER:

Prefabricated materials I am referring to, of course.

[58]

THE WITNESS: Yes, we did.

TRIAL EXAMINER:

You did.

Q (By Mr. Safos) And were these materials delivered to this project site? A Yes, they were.

Q I believe in response to the Trial Examiner's inquiry you said they were purchased from Thorpe, is that correct? A Yes, sir.

Q Who is Mr. Robert D. Graham? A Robert Graham is our foreman on the job, at the job site.

Q How long have you known him? A I have known Mr. Graham about ten years.

Q Has he worked on other jobs for Armstrong? A Yes, he has.

Q In the same capacity, that is, as a supervisor or as a foreman? A Yes, sir.

Q What information do you have regarding Mr. Graham's affiliation, if you do have any such information, concerning membership with or in a labor organization? A I understand he is a member of Local 113 in Corpus Christi.

Q You say you understand? A He said he is.

[59] Q How many insulation employees were on this project, that is, I am speaking of insulation employees of Armstrong in the period, let's say, of June and July 1963? A Approximately sixteen.

Q Please state whether or not Mr. Graham discussed with you any insulation problems on this project. A Yes. The latter part of June, when a supply of fittings, fitting covers were sent to the project, Mr. Graham, being unable to get in touch with Mr. Williams at that time, called me direct in Houston and told me that —

[60] A Advising that the members of Local 113 working for Armstrong at the job site would not apply the fittings that we sent to the job.

Q (By Mr. Safos) You say fittings. What fittings were these? A Fitting covers, the mitered fitting covers.

Q That we're purchased from whom? A From Thorpe. Some were made in our shop.

Q Did he give you any further reasons? A Because they did not have a union label:

Q When did the discussion take place?

TRIAL EXAMINER:

Sometime in June, I believe you testified.

[61] Q (By Mr. Safos) Were there any other discussions with Mr. Graham? A Yes, after several meetings here in Houston to resolve this problem —

TRIAL EXAMINER:

Meetings with whom?

THE WITNESS:

With Mr. Baker and Mr. Schrode of the International and Local 22. We called a meeting at the job site between Mr. DeQuir, Lummus Company superintendent, myself, Mr. Williams and Mr. Eaton, the business agent of Local 113, to see if we could plead with them to go ahead and apply these fittings because it was holding up the progress of the job.

TRIAL EXAMINER:

Now, excuse me. Do I understand between the time that Mr. Graham spoke to you and told you that the men were not applying the fittings, and the time of this meeting, the fittings had not been applied is that correct?

THE WITNESS:

No fitting had been applied, that's correct.

TRIAL EXAMINER:

No fittings had been applied. Thank you.

Q (By Mr. Safos) I believe you were discussing this meeting on the job site. A We held a meeting in Mr. DeQuir's office in order to —

[62] Q This is right on the project site, itself?
A Yes, sir.

TRIAL EXAMINER:

Can we get the date of this meeting? Was it in July or how long after —

THE WITNESS:

It was the last week in July.

TRIAL EXAMINER:

Last week in July. Thank you.

THE WITNESS:

Yes, sir.

TRIAL EXAMINER:

Thank you.

A And we asked Mr. Eaton if he would not have his men go ahead and apply these fittings, and he said that "Is that all we have to discuss, gentlemen?" And that was the end of the meeting.

Subsequent to that -

TRIAL EXAMINER:

That was his only response?

THE WITNESS:

Yes, sir.

TRIAL EXAMINER:

"Is that all we have to discuss, gentlemen"?

THE WITNESS:

Yes, sir.

TRIAL EXAMINER:

And left, that was the end of the meeting, rather?

THE WITNESS:

Yes, that was the end of the meeting in Mr. DeQuir's office.

TRIAL EXAMINER:

Go ahead.

THE WITNESS:

Outside Mr. DeQuir's office, later on, Mr. Eaton advised us that he was merely carrying out orders

[63] Q (By Mr. Safos) When you say "advised us," who do you mean, "advised us"? A Mr. Williams and myself. That he could not permit his men to apply those fittings.

Q And who is Mr. Eaton? A Business agent for Local 113.

Q Mr. Foster, who is Mr. Brooks Baker? A He is the vice-president of the International Association of Asbestos Workers, Heat and Frost Insulators.

Q Do you know if he has any other capacity with the labor organization? A I understand he is the Secretary of Local 22.

Q Do you personally know Mr. Baker? A Yes, sir.

Q What discussions, if any, were there with Mr. Baker or with any other representatives of the respondent unions concerning installation of insulation fittings or other items? Do you recall of any discussions concerning — I am asking you now about the installation of any insulation fittings on construction insulation work. A Yes, on June 3rd Mr. Baker and Mr. Schrode were invited to a meeting of the Houston Insulation Contractors Association to discuss the application of labels to prefabricated fittings. They

presented their reasons why they wanted the labels on there. We gave them our reasons why we did

[64] think we should be forced to apply these labels. The Association then notified the union by letter, signed by all members of the Association, that we would not permit this practice in our shops.

Q Where was this meeting held, you say? I believe you said on June 3rd. A This was held at the Houston Engineering and Scientific Society Building.

Then on July -

Q Well, before we go off this, what were the reasons assigned by Mr. Baker in his view? A To identify these fittings as being made by union people.

Q Were there any other reasons given by either Mr. Baker or by Mr. Schrode? A Not to my recall.

Q Please continue. A Then on — you want the other meetings?

Q All right, sir. A July 16, we then had two or three jobs that were being held up because the union had refused to apply fittings that did not bear the union label. And —

TRIAL EXAMINER:

When you say "we," do you mean Thorpe?

THE WITNESS:

No, the Houston Insulation Contractors Association, members of that.

[65] TRIAL EXAMINER:

Oh, I understand.

Q (By Mr. Safos) Let me clear this up. What position, if any, did you have with Houston Insulation

Contractors Association? A I am at present president of that Association.

Q All right. Go ahead. A A meeting was called on July 16 in which Mr. Baker was present with the Association again attempting to resolve this work stoppage or refusal on the part of their employees to apply fittings. And nothing was resolved. We were told that these men could not apply these fittings unless they bore a union label.

Q Do you know who the members are of this Association?

[66] A Yes, sir.

Q Who are they, please, sir? A They are the Hebert Company, Armstrong Contracting and Supply, B&B Engineering, Industrial Insulators, Precision Insulation Company, and Mundet Cork Company.

Q Is Johns-Manville also a member? A I am sorry. Johns-Manville, also.

Q Were there any other discussions with Mr. Baker? A No. sir.

Q Were there any discussions between you and Mr. Baker after these meetings, say, the July 16, 1963, meeting? A Yes, sir, we had a telephone conversation, as I recall.

Q Do you recall when this conversation took place? A Sometime in July.

TRIAL EXAMINER:

What was said?

THE WITNESS:

Well, during the conversation Mr. -

TRIAL EXAMINER:

Who called whom?

THE WITNESS:

I don't recall.

TRIAL EXAMINER:

All right. Tell us what the conversation was, then.

THE WITNESS:

The call was about something else, and some other subject.

TRIAL EXAMINER:

All right.

THE WITNESS:

But during the -

TRIAL EXAMINER:

And in the conversation what happened, what was said about the insulation problem?

THE WITNESS:

Mr. Baker said that he felt that our difficulties that we were having could have been resolved in another manner, and I replied that it seemed to me that we tried almost all avenues of resolving these problems, and Mr. Baker said that, well, this only meant one thing to him, and I said, "What is that?"

And he said, "That is the beginning of the end of the specialty contractor." Q (By Mr. Safos) What is this in reference to? A Specialty contractors or insulation contractors are specialty contractors in the construction industry whereby our agreement with our unions supposedly binds them to work only for established insulation contractors.

TRIAL EXAMINER:

Did Mr. Baker at any time tell you exactly what he wanted you or the other contractors to do in order to have the men apply these fittings or whatever you want to call them?

THE WITNESS:

Yes, sir.

TRIAL EXAMINER:

What was that?

THE WITNESS:

Put union abels on them,

TRIAL EXAMINER:

And to put union labels on them you would have to have them fabricated by union men, is that correct?

THE WITNESS:

Yes, sir, and most of them were.

[68] TRIAL EXAMINER:

From the time that you — it was Mr. Graham or the foreman told you that the men would not

install these fittings, until September 13 or shortly thereafter, were the fittings actually installed?

THE WITNESS:

No, sir.

TRIAL EXAMINER:

They were not until after an injunction was obtained?

THE WITNESS:

That's right, sir.

1691 MR. DEAKINS:

Would you mark that as Charging Party's Exhibit 1, please?

(The document above-referred to was marked Charging Party's Exhibit No. 1 for identification.)

DIRECT EXAMINATION

Q (By Mr. Deakins)

Q Now, do you know when the shipments were made to you from Thorpe Products Company? A How many? I mean —

Q I think there was testimony that there were two shipments, one on the 2nd and one on the 6th of Au-

gust. Is that

[70] correct? A That sounds correct, yes, sir.

Q And did your people pick those up, themselves? A I couldn't say. I don't know.

TRIAL EXAMINER:

The testimony was that they were picked up by Armstrong.

Q (By Mr. Deakins) Now, handing you what has been marked as Charging Party's Exhibit 1, which is a document entitled "Memorandum of Agreement," state if you can what that is. A This is the agreement between the Houston Insulation & Contractors Association and the International Association of Heat and Frost Insulators and Asbestos Workers, Local No. 22.

Q I notice that on this agreement your name appears as Secretary and Treasurer of the Houston Insulation & Contractors Association, is that correct? A Yes, sir.

Q And is this a copy that was furnished by you for the purposes of this testimony today? A Yes, sir.

Q And is it a correct copy? A' Yes, sir.

Q The names, of course, the signatures are printed in there, otherwise —

MR. DEAKINS:

[71] A Yes, sir.

Q — it is a copy that is in use, is that right? A Yes, sir.

·Q Are you familiar with the provisions of this agreement, Mr. Foster? A Yes, sir.

Q I want to refer you now to Article VI, and also to Article XIII of this agreement —

[72] Q (By Mr. Deakins) You are familiar with those, I take it? A Yes, sir.

Q Now, did you have any function in the negotiation of this agreement? A Yes, sir, I was a member of the Negotiating Committee.

Q Who else wes on the committee? A R. A. Stapleton and Granville Drowns.

Q Now, who represented the union? A Mr. Baker, Mr. Schrode. I think the other member was Mr. Mooney.

Q Mr. Mooney. His name appears as President. A Yes.

Q And it wouldn't be unlikely.

Did you have any occasion to discuss any particular agreements, sections or articles, rather, of this agreement with Mr. Baker during the negotiations? A Yes, sir.

Q What ones in particular did you discuss with him? A Well, in negotiating this present agreement we discussed every article, but one in particular that we objected

[73] to was Article VI.

Q Now, what was the nature of your objection?

MR. SICKLES:

Well, I will object at this point. We have a document before us that speaks for itself.

TRIAL EXAMINER:

Yes. You have a contract and a meeting of the minds. I am not going to go behind the contract.

MR. DEAKINS:

Mr. Examiner, the United States District Court up here permitted this testimony for the very simple reason that representations were made by the union in connection with this Article VI which bears on the interpretation of it placed on it by them, and that is what I propose to prove by this witness, and if the Examiner wants to deny it, I will make a formal offer of proof.

[74] Q (By Mr. Deakins) Let me ask this question:

Did Mr. Baker make any statement to you people who were in the meeting with reference to the intention of the Asbestos Workers Union to organize production workers in other plants?

[75] A Yes, sir.

Q (By Mr. Deakins) All right. What did Mr. Baker state with reference to those intentions?

A I can't remember his exact words, but they were to the extent that they did now have some production workers locals, and that they hoped to get more of them.

Q (By Mr. Deakins) Now, where were these production workers locals, where were they performing their work?

MR. DEAKINS:

Mr. Examiner, I would like to make a formal offer of proof that if this witness were permitted to testify he would testify that Mr. Baker was called

that he had just gotten back from an International meeting and that he told the members of the Association that the International meeting are what they called the production worker in every plant where they could do it, and the members of the Association asked him if the Asbestos Workers had these production workers, and he stated yes, that they had them at three plants, one at Barberton, Ohio, and one at Owens-Corning, Kansas, at Kansas City, and one in some other place, and that the production worker was supposed to work in a manufacturing plant and make all types of insulation products, and the witness would so testify if he were permitted to.

TRIAL EXAMINER:

I will reject the offer of proof on the grounds that it isn't relevant to the specific issues of this pleading, which were very clear and very specific.

[77] MR. SICKLES:

Well, I will offer what has been marked as Charging Party's Exhibit 1 in evidence as the International's Exhibit 1.

TRIAL EXAMINER:

It will be received. I want it in.

(The document above-referred to, heretofore marked Charging Party's Exhibit No. 1, was received in evidence.)

CROSS EXAMINATION

- Q (By Mr. Sickles) Mr. Foster, you testified that you have for some time now purchased insulation materials from the Thorpe Company? A Yes, sir.
- Q This has included, has it not, straight line pipe? A Yes, sir.
 - Q And has there been any union decals or union labels on those?
- [78] A Not to my knowledge.
 - Q And they have been applied? A Yes.
- Q To your knowledge have you purchased any of them in the last three months prior to September 13? A Yes.
- Q And have they been applied? A. What are we talking about?
- Q Straight line pipe covering. A To my knowl- . edge they have been, yes, sir.

Q All right.

You purchased some mitered fittings from Thorpe, you testified. When you have a project, or let's take the Lummus project in Victoria, how many, roughly how many fittings were there to be covered on that project? A I couldn't give you a specific count. It's over a truckload.

Q Did you have any of your employees working for you mitering fittings? A Yes, sir.

Q Where? A In our shop in Houston.

Q All right.

And were they applied? A No, sir.

[79] • Q None of them were applied? A None of them were applied,

Q And why were they not applied?

MR. DEAKINS:

I object to that.

TRIAL EXAMINER:

If he knows.

Q (By Mr. Sickles) Well, if you know. A Because they didn't have the union label on them.

Q All right.

TRIAL EXAMINER:

Do you withdraw the objection?

MR. DEAKINS:

Yes, I do now.

Q (By Mr. Sickles) Do you purchase that which we referred to earlier as a pre-molded fitting? Have you ever had occasion to purchase any of those? A A pre-molded fitting?

Q A pre-molded fitting. A Yes.

Q A manufactured fitting. A Some of those were sent to the job.

Q And from whom were they purchased? A Pam-Rod.

Q Pam-Rod? A Company.

Q And if you know, do they have a union label on them? A Not to my knowledge.

Q Were they applied?

[80] A Yes, sir.

Q By individuals working under the jurisdiction of Local 113, under the contract? A What are you saying?

Q In Victoria. A They were applied? Yes, yes.

· Q All right.

You indicated that Mr. Baker made a statement that he was concerned with the fact that these hadn't been fabricated by union men, in this correct? You made that statement on direct examination, I believe.

A That he was concerned with the fact that —

Q That — well, let me rephrase the question. A All right.

Q That there was a desire to have union labels or union decals placed on mitered fittings to assure that they had been fabricated by union men. A Yes, sir.

Q Is it not a fact over the course of the years you have had a number of employees working for Armstrong who-were covered by the collective bargaining agreement who were not union men?

TRIAL EXAMINER:

If you know.

A Yes.

Q (By Mr. Sickles) Yes, you have?

[81] Q (By Mr. Sickles) Without specific referce to this job, have you over the course of the years mitered fittings with your own employees? A Yes, sir.

Q And have they been applied? A Yes, sir.

Q Is it not the fact that the great majority of the mitered fittings that you have requested employees to apply have been applied?

MR. DEAKINS:

I object to this as immaterial, this past history, Mr. Examiner.

MR. SICKLES:

They are trying to show a conduct or course of conduct.

TRIAL EXAMINER:

I will allow him to show a course of conduct.

A Yes, they have been applied.

TRIAL EXAMINER:

All I am interested in are the fittings that weren't applied, of course.

Q (By Mr. Sickles) If you know, the fittings that were purchased by Thorpe in the instant case, were they any different than the — the end result any different?

[82] TRIAL EXAMINER:

Purchased by Thorpe or purchased by Armstrong from Thorpe?

MR. SICKLES:

From Thorpe, I am sorry, from Thorpe.

Q (By Mr. Sickles) Were they are different, the end product, from the fittings that your employees fabricated in your shop? A No, sir.

Q All right.

Then if you as a matter of course fabricate them in your shop why did you purchase them from Thorpe in this instance? A I think it's common practice to ship or make fittings when your shop is running for a large project, to make them, ship them down there, and if your shop is not running, when engineering changes come along, we buy them, or if it's running we make them.

[83] Q You purchase from Thorpe on occasions straight line pipe covering? A Yes, sir.

Q And have your people miter it and make a prefab fitting, a mitered fitting? A Right.

Q And in this particular case instead of buying the straight line pipe covering you purchased a mitered fitting which is straight line pipe covering that has been mitered? A That has been manufactured—

Q Right. A — into a — yes.

TRIAL EXAMINER:

Yes.

Q (By Mr. Sickles) Well, you said manufactured. This is not done by a machine, is it? A It is in our shop,

TRIAL EXAMINER:

The testimony is it was done by a saw, according to the testimony.

THE WITNESS:

It's a very special type saw. It's a very expensive type saw.

Q (By Mr. Sickles) So that certain labor which would normally be performed by your employees were they to miter these on the job site or in your shop, you purchased from Thorpe, is that correct? A I

didn't purchase the labor. I purchased the manufactured product.

Q You purchased a product that was a mitered fitting, which had labor performed on it —

TRIAL EXAMINER:

It had been cut up and sliced in the Thorpe shop?

THE WITNESS:

Yes.

TRIAL EXAMINER:

On other occasions it might have been purchased in the bulk and cut up in your shop. We understand that.

THE WITNESS:

O. K.

Q (By Mr. Sickles) All right.

When you signed Charging Party's Exhibit No. 1,

the contract, you recognized that this prohibited subcontracting of labor, did you not? A That is correct, at the job site.

[85] Q (By Mr. Sickles) Mr. Foster, you made reference to certain meetings held by yourself, other members of the Houston Insulation Contractors and certain officials of Local 22. First of which was on June 3rd. A Yes, sir.

Q All right. Was there any representative of Local 113

[86] there? A No, sir.

Q All right.

Now, you discussed the question of application of these mitered fittings at that meeting? A Yes, sir.

Q And you stated that Mr. Baker primarily, the corresponding secretary of Local 22, made certain statements that there had to be union decals placed on those fittings. A Yes, sir.

Q And you stated that this was to assure that unfon men had worked on these fittings? A Yes, sir.

Q I ask you this question, is it not the fact that at those meetings Mr. Baker stated that they desired union decals as a question of identification to know whether or not these fittings had been mitered by employees of Armstrong? A. No, he didn't clarify that to that point.

[88] Q (By Mr. Sickles) Did you not state in answer to a question that I asked you in the United States District Court here in Houston as to whether or not Mr. Baker did not state at that meeting that he was concerned, wanted decals as identification to see or assure that the products were mitered under the terms of the agreement, and your answer to that was, "I don't recall Mr. Baker's words," with reference to this meeting? A Are you telling me that is what my answer was?

TRIAL EXAMINER:

No, he is asking you if that was your answer. He is not telling you what your answer was.

Q (By Mr. Sickles) I ask you more specifically if you did not say "I can't remember his wording back that far, no"? A That was my answer to your question.

Q All right.

Now, today are you telling us you can remember Mr. Baker's wording? A No, I just said that.

TRIAL EXAMINER:

He just said he couldn't remember -

A I said I couldn't remember exactly what he said.

[89] It is your statement that you do not remember what Mr. Baker said at that meeting specifically?

TRIAL EXAMINER:

With respect to Armstrong.

A Specifically to Armstrong. You rephrased the question just now.

TRIAL EXAMINER:

You asked him if Mr. Baker did not tell him at that time that he wanted the decals on these fittings to show that they were made by Armstrong employees. And he said he didn't remember that portion of the conversation.

THE WITNESS:

That's right.

Q (By Mr. Sickles) Well, do you remember at this point that Mr. Baker specifically stated that this was with reference to union men? Is that your present recollection?

TRIAL EXAMINER:

This was with reference to his reasons for wanting decals on the material.

THE WITNESS:

Right.

TRIAL EXAMINER:

You do recall that he said he wanted that so it would identify the fact that union men had been employed, is that correct?

That is my understanding of your previous testimony.

MR. SICKLES:

That is my understanding of his testimony.

THE WITNESS:

That's right.

Q (By Mr. Sickles) And you are stating that he did

[90] specifically state that? A Yes, sir.

MR. SICKLES:

Well, I would, then, Mr. Examiner, like to read a series of questions and answers to the witness and ask him if he did not so testify in the District Court case.

[91] A "QUESTION: I ask you if it was not identification as to whether or not it had been made under the terms of the agreement. Was that not specified to you by Mr. Baker?

"I can't remember his wording back that far, no."

[97] CROSS EXAMINATION

Q (By Mr. Mitchell) Mr. Foster, you were present when Mr. Frank Shelden testified this morning, weren't you? A Yes, sir.

Q Did you hear him, his testimony to the effect that he, as far as his memory was concerned, had only sold mitered fittings to your company on just this one occasion? A I heard him say that, yes.

Q Are you prepared to tell the Hearing Officer here for this record that your memory differs from his in this respect and that you have bought mitered fittings from Armstrong on more than one occasion? A From Armstrong?

TRIAL EXAMINER:

No, from Thorpe.

Q (By Mr. Mitchell) From Thorpe. A I don't know what our records reveal in that respect. I do

know that we have purchased other pre-formed materials from them, or prefabricated, prefabricated, I am sorry.

[100] Q And isn't it true, Mr. Foster, that Mr. Eaton told you at that time that they weren't being applied because they couldn't tell who had mitered or manufactured these? A No, that is not true.

Q That is not true.

Didn't he in fact tell you that if your company, Armstrong, could show them, show the insulators down there on the job and him, that if these fittings had been mitered or manufactured by Armstrong, that they would apply them? A Yes, sir.

Q He told you that, didn't he? A And we gave him that proof in the form of a letter, and they still refused to apply the fittings. He told me that he couldn't allow his men to apply the fittings because he had orders from the International.

Q And so in response to that meeting, Mr. Foster, your company wrote Mr. Eaton a letter, is that true? A Yes, sir.

Q And in that letter you stated that these mitered

[101] fittings on the Victoria job had been manufactured by employees of Armstrong? A When that letter was written that was true.

Q Is that right? A .Yes, sir, and they still refused to apply them.

[102] Q (By Mr. Mitchell) Mr. Foster, didn't you previously testify that the latter part of June some mitered fittings were sent to the Victoria job? A Yes, sir.

Q But that those fittings were all manufactured by Armstrong? A That's right.

Q And then is it your testimony that at a later time the mitered fittings were purchased from Thorpe and sent to the job? A Yes, sir.

Q And what was that date, approximately? A We purchased fittings from Thorpe and Pam-Rod both the first week in August or the last week in July. I have forgotten. I had the purchase orders here previously.

Q One final thing. At this meeting with the business agent of Local 22, Mr. Schrode, and I think Mr. Baker was there too, at the Houston Engineers Club— A Uh-huh.

[103] Q — when the question of applying decals was brought up — A Yes, sir.

Q — applying decals to these manufactured or fabricated materials was brought up, did not Mr. Schrode, as well as Mr. Baker, tell you at that meeting that they weren't married to the decals, and that they would consider any other form of identification? A That's correct, and we furnished it, and they still wouldn't apply our fittings. All we want to know is how to get them applied.

Q Then isn't it true that the sense of the meeting between Mr. Schrode and Mr. Baker and yourself at the Houston Engineers Club was the matter of identifying who made the manufactured or the mitered product? A That's right, and we furnished that identification in the form of a letter.

Q That is, identification from the company point of view? A Yes, sir.

Q All right. A And that in the past, that had always been sufficient.

Q I am not sure that we are on the same wave length, perhaps, Mr. Foster. A All right.

Q Let me repeat the question, if I may.

You have already testified that at this meeting between Mr. Schrode and Mr. Baker and yourself at the Houston Engineers Club —

TRIAL EXAMINER:

There were two meetings at that club, at the Engineers Club, weren't there?

THE WITNESS:

Yes, sir.

TRIAL EXAMINER:

We better get the right meeting.

MR. SAFOS:

One on the 3rd, and one on the 16th, I believe.

TRIAL EXAMINER:

That's right.

Q (By Mr. Mitchell) Let's talk about the June 3rd meeting first. That was — A Yes, sir.

Q At that meeting the application of these labels to prefabricated fittings was discussed, was it not? A Yes, sir.

Q And I think you have testified that the union's position was that they wanted the decals to be placed

on these mitered fittings or prefabricated fittings at that meeting? A. Yes, sir.

Q And at that meeting, same meeting, they told you that they weren't married to the decals, the decal method of identification, isn't that true? A Yes, sir.

Q That they would consider any other method of identifying

[105] who made the product, isn't that true? A Yes, sir, that's right.

TRIAL EXAMINER:

Did Baker tell you why he wanted these products identified regardless of the method of identification used?

THE WITNESS:

To assure that they were made by their people.

TRIAL EXAMINER:

That is what I thought.

Q (By Mr. Mitchell) Now, Mr. Foster, I had previously understood, maybe it's my fault, but I want to get this one thing clear, if we can.

Wasn't one of the purposes of identifying the product

[106] or putting the decal or other identification mark on the mitered fittings, to determine which manufacturer had in fact, which company had in fact mitered that fitting?

A I don't know.

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C. E. FOSTER

TRIAL EXAMINER FUNKE:

You are still under oath.

What I wanted to ask you, Mr. Foster, when Armstrong cut its own mitered fittings, where did it perform that work?

THE WITNESS:

In our shop, in the Houston warehouse.

FURTHER CROSS EXAMINATION

Q (By Mr. Sickles) This was merely a matter of convenience, though, to you, was it, so you wouldn't have to move the saw? A It's our mode of operation, yes sir.

Q But there is no reason this work could not be done at the job site? A It would be come inconvenience, yes, because —

Q Because of the moving of the saw? A Because of the largeness of the saw and it's a special, expensive type piece of machinery.

Q If you did not use the saw and used a handsaw or have you ever used a handsaw operation? A Years ago, yes sir.

[109] Q And where was that work done? A In the field.

Q On the job site? A Uh-huh.

REDIRECT EXAMINATION

Q (By Mr. Safos) Mr. Foster, is this doing of fittings, mitered fittings on the job site, is this a regular procedure insofar as Armstrong is concerned or insofar as the insulation industry in this area is concerned? A It's not a regular procedure any more in this area, particularly at Armstrong.

Q And how is it accomplished? A Most of the shops, most of the contractors have their own shops in their warehouses to miter these fittings.

RECROSS EXAMINATION

Q (By Mr. Sickles) But this is the same work, done by the same type of an employee, who could do wis with a handsaw on the job site, it's the same mechanics, the same wage rate, et cetera? A That's right, I mean, just improved methods is what it amounts to.

Q It's just a convenience to you so you don't have to move that expensive saw around? A Right.

TRIAL EXAMINER:

Thank you.

[111] LYNN WILLIAMS

was called as a witness by and on behalf of the General Counsel . . .

TRIAL EXAMINER:

Give your name to the reporter, name and address to the reporter, please.

THE WITNESS:

Lynn Williams, 2122 DuPont Drive, New Orleans.

DIRECT EXAMINATION

Q (By Mr. Safos) Mr. Williams, by whom are you employed?

[112] A Armstrong Contracting and Supply Corporation.

TRIAL EXAMINER:

Were you in charge or superintendent over what we have referred to as the Victoria Project?

THE WITNESS:

Yes sir.

[114] Q You mentioned Mr. Robert Graham.
What was his position

[115] on this job? A He was foreman, general. foreman of this job, this project.

Q Over what employees, please, sir? A Over the asbestos workers, Local 113, insulators.

Q Was he the general foreman? A Well, I would

classify him as the general foreman because he had one sub-foreman under him.

[117] Q What did he tell you? A He was a member of 113, International Association of Heat and Frost Insulators and Asbestos Workers.

Q Respondent Local 113? A 113, correct.

Q How many Armstrong employees, that is, insulation employees, worked on the du Pont Project? A Well, at the time I left, at that particular time, there was around between fourteen and sixteen.

Q Is that with the exception of Mr. Graham? A That would be with the exception of Mr. Graham, yes.

Q To your knowledge to what labor organization, if any, did these employees belong? A Well, they were supposed to have belonged to 113.

[118] Q (By Mr. Safos) Well, they were hired, were they not, by Mr. Graham? A Yes, under my supervision. There were several — there was one I know of definitely that was not. He was a so-called helper that said he did not belong to Local 113.

Q He was not a member, you say he was not a member of Local 113? A No sir, he wasn't, according to what he said.

Q (By Mr. Safos) Now, will you please tell us whether or not Mr. Graham discussed with you any

problems regarding insulation work on the du Pont Project? A Well, we had quite a few problems, but the biggest problem was the application of these mitered fittings.

Q Well, let's start off with some dates, please, sir. A Well, this would probably, if I remember correct, would be the latter part of June or the first part of July.

Q Of this year? A Of this year.

Q All right. Tell us about these discussions. Were they on the project site or not?

[119] A They were on the project site, right, when I made my regular job site visits.

[120] THE WITNESS:

Well, he informed me that these fittings would not be applied, and he was informed by Mr. Eaton, business manager of Local 113, that these would not be applied unless they had union decals.

Q (By Mr. Safos) Was there anything else to the conversation? Did Mr. Graham state to you what would transpire or what would happen in the event they were applied? A If any of the fittings that were applied were applied without union decals a membership, whoever applied them, would be charged formally before the Executive Board or some other charge.

[121] A Well, at the first discussion it was just Mr. Graham and myself, but then we immediately contacted, made contact with Mr. Eaton, in

which this was discussed with Mr. Eaton.

Q When was this? A. The exact date I can't say. ·Q It was after the conversation, was it not, with Mr. Graham? A It was after the conversation with

Mr. Graham.

A Mr. Eaton came over to our project where we discussed this, and he formally told me that the fittings would not be applied unless they had union decals, union labels.

Q Were there any further conversations [122] on the project site with Mr. Eaton? A Yes, there was. Mr. P. S. DeQuir's office, the project manager for Lummus Corporation, Mr. Foster, myself, Mr. Eaton and Mr. P. S. DeQuir, where this fitting situation was discussed, and as Mr. Foster stated earlier, it came to an abrupt halt, and outside after this meeting was over, outside Mr. Eaton informed us the situation was as it stood before, that the fittings wouldn't be applied.

Q I believe you already testified that the mitered fittings at least were not applied at that time. A

They were not.

CROSS EXAMINATION

Q (By Mr. Mitchell) Mr. Williams, I think you were probably here this morning, too, when you heard Mr. Shelden of the Thorpe Company say that these mitered fittings that we are talking about here today, and which gives rise to this charge, were purchased by Armstrong on only one occasion.

Now, I want to ask you — you heard that, did you not? A Yes, I heard that.

Q I want to ask you this question.

From your years with Armstrong, are you able to contradict that statement in any way? A No, I am not able to contradict that statement. It was just one occasion that we had bought them from Thorpe. They have bought prefabricated fittings from other companies.

MR. DEAKINS:

Just a minute. Could I have the last of that answer?

MR. MITCHELL:

Welf, the last part of it was unresponsive.

MR. SAFOS:

Well, let's hear it.

THE WITNESS:

In this particular case, one or two cases, like I said, I was on vacation at the time, I don't know whether it was one occasion or two occasions, they were manufactured, they were bought from Thorpe, but there had been fittings bought from other manufacturers of fittings.

TRIAL EXAMINER:

The gist of it was he said he couldn't contradict the testimony of the representative from Thorpe.

[124] Q (By Mr. Mitchell) Now, Mr. Williams, were you aware that on this particular job at Victoria your company, Armstrong, had purchased manufactured fittings from Pam-Rod? A Yes, I was aware of that after I came back off of my vacation.

Q And those manufactured fittings were applied by Armstrong's employees, were they not? A That is correct, the molded fittings.

Q No question was made about those? A No, no question whatsoever.

Q Now, in your meetings, and you have testified that there were at least two that took place between yourself and Mr. Graham, the job foreman, and Mr. Eaton, the business agent — A Right.

Q — for 113, in those meetings isn't it a fact, Mr. Williams, that Mr. Eaton was primarily concerned with who had manufactured these mitered fittings, that is to say, wasn't his inquiry directed to whether or not Armstrong had prefabricated these mitered fittings or whether some other contractor, such as Thorpe, or somebody, had manufactured these fittings? A All I know, they were concerned with whether they had union labels on them.

Q You don't remember Mr. Eaton directing his inquiry or asking you or trying to seek information about who had

[125] manufactured or who had made these mitered fittings? A Not the ones that were bought from Thorpe. The ones that we manufactured, myself, I told him who had made them.

Q. There was some discussion, then, I take it, Mr. Williams, between you and Mr. Eaton as to who manufactured these mitered fittings? You all talked about that? A Yes, we did talk about that.

Q And you told him or let me ask you, did you or not tell him that these mitered fittings that the men were refusing to work with were in fact manufactured by Armstrong? A That is correct.

Q And he, on the other hand, or let me ask you whether or not he was maintaining, that is, Mr. Eaton vas maintaining that they had been manufactured by somebody other than Armstrong? A No, I don't recall—all I can—I informed him that—he asked me who they were made by, and I told him who they were made by, they were made by Armstrong in our shop.

Q And then was it subsequent to that or do you know that Armstrong wrote Mr. Eaton and assured him in letter that these mitered fittings down there were in fact manufactured by Armstrong and not by anybody else? A Yes, a letter was written to that effect.

[126]

CROSS EXAMINATION

Q (By Mr. Sickles)

[127] Q Over the years that you were in this particular area, and had employees working under the collective bargaining agreement, either with Local 22 or 113, did you have occasion to have employees who were not members of either union? A Yes.

Q Did Mr. Eaton ever tell you why he felt that decals had to be present on the fittings? A So far as I know, he — *Q Did he ever tell you?

TRIAL EXAMINER:

Did he ever tell you? Can you remember [128] what he said?

THE WITNESS:

Yes, he said they couldn't apply them because they didn't have the union labels and there was pressure from above.

Q (By Mr. Sickles) No, I understand what your testimony is. A He was following orders.

Q But did he ever tell you why, what the purpose of having the union decals was? A No, I don't think he ever explained that to me.

EDWIN E. ROBERTS

was called as a witness by and on behalf of the General

[129] Counsel

DIRECT EXAMINATION

Q (By Mr. Safos) Mr. Roberts, by whom are you employed? A Johns-Manville Sales Corporation.

Q In what capacity? A Contract manager.

Q And how long have you been contract manager? A Approximately three years.

Q Mr. Roberts, what is the business relationship between Johns-Manville and Techalloy Company, Incorporated of Houston? A Techalloy is one of our suppliers of accessory materials.

Q What kind of materials, please, sir? A Accessory.

Q Accessory? A Uh-huh.

Q What do you put in the classification of accessory materials? A Stainless steel bands, stainless steel wire, tie wires.

Q To your knowledge as contract manager how long has this relationship, business relationship, existed?

[130] A Well, ever since I was contract manager, I know that it has existed.

Q That is at least for three years? A Yes, uh-

Q What is the nature of the construction work engaged in for American Oil Company in Texas City, Texas? A We are applying insulation to the ammonia barge piping job at American Oil Refinery at Texas City.

Q Your job is applying the insulation? A Yes, sir.

Q What materials do you use in this application? A Under the pipe we apply, we are applying Polyure-thane insulation, two inches thick, and covering it with galvanized metal and the attachments on the original specifications was stainless steel bands to apply the pipe, to attach the pipe covering, and stainless steel bands to attach the jacketing.

Q Now, these stainless steel bands, from whom were they purchased? A They are purchased from the Techalloy Company.

TRIAL EXAMINER:

When did this purchase take place, do you recall?

THE WITNESS:

Well, I have a copy of the purchase orders in my brief case, if you would like for me —

TRIAL EXAMINER:

No, do you remember the month?

THE WITNESS:

I believe it was June sometime, I believe.

[131] TRIAL EXAMINER:

And they were delivered to the job site or you picked them up?

THE WITNESS:

No, they were delivered to our warehouse.

TRIAL EXAMINER:

Then what happened?

THE WITNESS:

We started applying seals to the bands in the warehouse with an asbestos worker whose name is Robert Oliver, and he stopped seals on them because he said he couldn't — that Joe Schrode had told him not to put the seals on them because he couldn't apply decals or labels to the bands because they had been cut by a person other than a Local 22 or asbestos worker, not Local 22.

TRIAL EXAMINER:

This is what this employee told you personally?

THE WITNESS:

That is correct.

[132] Q Other than pre-cut stainless steel bands, were there any purchases made for this project made from Techalloy as to coil stock? A Yes, there was.

[133] Q Mr. Roberts, who is the foreman for Johns-Manville on this American Oil, Texas City Project? A Clifford David.

Q And how long have you known Mr. David? A Approximately two years.

[134] TRIAL EXAMINER:

Well, I am not going that far now because I don't have to. I will sustain the objection.

Q (By Mr. Safos) Has Mr. David told you whether he was a member of any labor organization? A He said he was.

Q What labor organization?

[135] A Local 22, Asbestos Workers.

Q Thank you.

Now, as contract manager for Johns-Manville, what is your relationship as a supervisor with Mr. David at the project site? A Mr. David is the foreman, and we have the field superintedent who is directly

— who he is directly responsible to, and the field superintendent is directly responsible to me.

[136] Q (By Mr. Safos) Mr. Roberts, inform us whether or not Mr. David discussed with you at this project site any problems regarding insulation work. A Yes sir, he did.

TRIAL EXAMINER:

What did he say? What did he tell you the problem was?

THE WITNESS:

He told me that he could not apply these [137] pre-cut bands to the insulation.

TRIAL EXAMINER:

Did he tell you why he couldn't?

THE WITNESS:

Yes, he did. He said that they did not have a label on them, and therefore he couldn't apply them, and he was told by Joe Schrode not to apply them, if they didn't come to the job with a label on them.

Q (By Mr. Safos) when was this conversation, please, sir? A I believe it was in — I can't remember the exact date. I believe it was early — I guess it was the last part of July or the first of August. I can't recall the exact date.

Q Was anyone present during this discussion? A Yes, Mr. D. G. Cheek, our field superintendent, was there.

Q Is that D. G.? A Yes, uh-huh.

Q D. G. Cheek.

And is he field superintendent, you say? A Yes.

Q Did Mr. David inform you as to when he was advised by Mr. Schrode? A Yes, he said that he was attending a meeting —

TRIAL EXAMINER:

This is all hearsay as to the Respondent.

THE WITNESS:

He said he was at a meeting at Local 22, and that he was told not to —

knowledge, have employees of Local 22 applied pre-cut stainless steel bands on any other projects? A I can't recall a project at this moment where stainless steel bands were applied, but there were aluminum bands, which are the same application.

Q What project were you having reference to as to aluminum bands? A The NASA Project where we applied aluminum bands to hold onto metal.

Q What is the difference in the bands we are considering? A The difference in the metal.

Q The difference in the metal, is that the only difference?

[140] A They both have a seal on them and they both attach the metal or the insulation to the line.

Q Would you please state whether or not coil stocks have regularly been cut on the job sites by insulators

for installation on projects? A They have been cut on the job sites, yes sir, regularly.

Q I was asking you whether this was regular procedure.

TRIAL EXAMINER:

Is it customary to do it at the job site or don't you know?

THE WITNESS:

No, it's customary — this is hard to answer because there are so many types of pre-cut bands. It's customary if you are talking about pre-cut bands, to have them come in cartons.

TRIAL EXAMINER:

What we are really talking about is pre-cut stainless, steel bands.

MR. SAFOS:

Yes sir.

Q (By Mr. Safos) I wonder, Mr. Roberts, do you have any of these pre-cut stainless steel bands? A Yes sir, I have some that we manufacture.

[143] Q (By Mr. Safos) Did Mr. Schrode discuss with you problems concerning the application of insulation material on this project? A He discussed with me the application of these stainless steel bands.

Q Now, when was this discussion? A Well, this was after Clifford said that he couldn't put the bands on down at Texas City. I called him —

Q You mean this is David which you refer to as Clifford? A Clifford David, right.

Q All right. A After we found out they were going, not going to be applied, well, I came back and called Mr. Schrode and he said that that was right, the bands would not be applied because they were cut by someone other than asbestos workers, and

[144] that Robert Oliver could not affix labels or seals to the bands. Therefore, the bands would go to the job without seals on them, and they would not be applied, or labels.

Q (By Mr. Safos) Who is Mr. Robert Oliver? A He is one of our employees that is a member of Local 22.

[145] Q (By Mr. Safos) Mr. Roberts, what position, if any, do you hold with Houston Insulation Contractors Association? A I am secretary and treasurer.

Q And how long have you been in that capacity? A Since the first of 1963.

Q Do you recall having any discussion with Mr. Brooks Baker and/ or with Mr. Schrode? A Yes sir.

Q Will you tell us about these, please? A We had discussions — they were invited to attend our Association meetings.

TRIAL EXAMINER:

The meetings in the Engineers Building,

[146] right?

THE WITNESS:

Yes sir, that's right.

TRIAL EXAMINER:

All right.

A And we were discussing the application of labels to fittings and stainless steel, or any kind of materials fabricated, and we asked them why we were to put these labels on, and he said they were for identification purposes.

TRIAL EXAMINER:

Identification of what?

THE WITNESS:

That I am not quite clear o I didn't understand it thoroughly in either case. But we objected to putting them on on the grounds that it increased our cost and it was an item that should be negotiated into the contracts.

Q (By Mr. Safos) Can you recall any further discussions? A Well, there was quite a great discussion at lengths. Is there any particular thing that we are referring to or do you want —

TRIAL EXAMINER:

All I am interested in is this business of the union label or the identifying mark on these fittings, whatever they are. That is all. I am not interested in your general discussions of policy.

A He said if these labels weren't applied, that the

workmen on the job wouldn't apply that particular item.

TRIAL EXAMINER:

But you have no clear idea of why? You didn't understand exactly why this would be required, this was to be required?

[147] THE WITNESS:

No, we didn't attempt to bring this up and it wasn't brought up by our organization, and so I have no knowledge of why.

[148] CROSS EXAMINATION

- [151] Q And it's your testimony that there has been utilized in
- [152] the Local 22 area bands with the use of a ratchet type tool, and have been used by, precut, and have been used by members, by people represented by Local 22? A Yes sir, there has been.
- Q On how many occasions? A Well, I can think of one large project right now.
 - Q And where was that? A NASA.
 - Q And if you know, was that information available to the officials of the local, that they were using the pre-cut band?

A The officials of the local were on the job several times. I do not know whether they had knowledge.

Q All right.

Now, when bands have been brought, Techalloy bands have been brought to job sites, in coils, and they have been applied and cut by workmen under the jurisdiction of Local 22, has there been any objection to the use of these bands?

[153] A Yes, sir, they have used them. Q All right.

Do these coil bands, Techalloy bands, have a union label on them? A I don't believe so.

Q All right.

Do you know, only if you know, the reason that Local 22 desires decals or labels? A No, I don't have a clear understanding there.

Q All right.

Q (By Mr. Sickles) Well, let me ask this, you discussed the meetings at the Engineers Club, there were two of them. A Yes, sir.

Q At one or both of these meetings did Mr. Baker ever state that Local 22 was not concerned primarily with union decals but any kind of identification would be acceptable? A Well, we had a means of identification before, and it was changed without our knowledge.

Q: And what was that means of identification?

[154] A A shipping ticket from the company that listed the fittings that were purchased.

[155] Q (By Mr. Sickles) Back to the meeting that we were discussing, is it not true that Mr. Baker stated that they wanted a form of identification to show which contractor had prefabricated the particular work? A Well, I can't remember exactly. I know that it was a statement made that was similar to that, and exactly, I don't know.

[156] Q All right.

Let me ask you this, you testified, did you not in the injunction hearing? A Yes sir, that's right.

Q Do you recall that I asked you the question that I have just put to you, that Mr. Baker was concerned with identification or form of identification to show which contractor had been prefabricating the particular work and you stated that that was correct? A Well, as far as the exact wording, I can't say now, but the similar statement I agreed on, I am sure.

[157] REDIRECT EXAMINATION

Q (By Mr. Deakins) ...

[158] Q Do you recall whether or not there was any discussion among the group whom you represent that is to say, the Houston Insulation Contractors Association, with reference to the application of decals to the materials that you would receive on the job? A Yes.

Q Who was that carried on with? A That was in both meetings, and this particular meeting that Mr. Baker was there by himself we had several jobs where fittings were not being applied.

Q Now, did you recall whether or not inquiry was made of Mr. Baker as to the reason for his asking for decals to be put on those materials? A He said that it was for a mutual benefit between the contractors and his asbestos workers, and that it would identify the workmen and the contractor who made these fittings.

Q It would identify the workmen and the contractor, as well, who made the fittings?

[159] A Yes sir.

Q Now, did he distinguish between manufactured and fabricated fittings or not? A Yes, he said that, he distinguished molded fittings and machine-made fittings, as against mitered fittings, and he said he was referring to mitered fittings.

[162] H. CLIFFORD DAVID

was called as a witness by and on behalf of the General Counsel

TRIAL EXAMINER:

Give your name and address to the reporter.

[163] THE WITNESS:

H. Clifford David, Route 1, Box 225, Magnolia.

DIRECT EXAMINATION

Q (By Mr. Safos) Mr. David, by whom are you employed? A Johns-Manville.

[164] Q (By Mr. Safos) Mr. David, are you a member of any labor organization? A Asbestos Workers Local 22.

Q How long have you been a member? A Twelve years.

[165] Q (By Mr. Safos) Who is Mr. Joe Schrode? A He is business representative for Local 22.

Q Do you personally know him? A Yes, sir.

Q How long have you known him? A Ten years.

[166] Q (By Mr. Safos) What discussions, if any, did Mr. Schrode have with you concerning his insulation work on this project? A Well,

he told me at the meeting on July 19th that he had heard those bands were already cut, and if they came to me without decals for me to refuse to put them on.

TRIAL EXAMINER:

0

What did you do as a result of this direction?

A And they brought the material down and the bands, and I looked the bands over and there wasn't no decal on them.

[167] THE WITNESS:

I went to Mr. Roberts and Mr. Cheek and I told them that I had to refuse to put his bands on, that I could not put them on, and he asked me why, and I said there wasn't no decal on them.

TRIAL EXAMINER:

Then you didn't put them on, is that correct?

THE WITNESS:

No sir. They brought me some coil stock.

Q (By Mr. Safos) Did you tell Mr. Cheek and Mr. Roberts of your instructions from Mr. Schrode? A Yes, sir, I did. I told Mr. —

Q Go ahead. A I told Mr. Roberts that if he would contact Mr. Schrode and whatever Mr. Schrode told me to do, that is what I would do.

[169] TRIAL EXAMINER:

Well, I want to know what the purpose of a decal is. Does it tell you what company the product came from?

THE WITNESS:

If it's got a decal on it -

TRIAL EXAMINER:

Does that mean it's been done by union labor or what does it mean?

THE WITNESS:

No sir, not necessarily. If it's got a decal on it, I call my business agent and I give him the number off of that decal, and he tells me what specific shop cut it.

[170] Q (By Mr. Deakins) Mr. David, that meeting you testified concerning, which took place on July 19, 1963, was a union meeting, was it? A Yes sir, it was.

Q Of the Asbestos Workers Local No. 22? A Yes

CROSS EXAMINATION

Q (By Mr. Mitchell) Mr. David, have you ever applied any steel bands that you had to cut, yourself, at the job? A Yes sir.

• Q Do you know that those steel bands come in a big roll, is that how — A Yes sir.

Q Has there ever been any difficulty about working with the steel bands that come in a roll that you take off?

[171] A Being any difficulty?

Q Yes, have you ever refused to work on steel bands that have come to the job that are in a roll, that you have had to cut yourself? A No sir.

Q (By Mr. Mitchell) Now, I want to ask you this, about a conversation that you have testified to for Mr. Safos, that you allegedly had with Mr. Schrode, I want to ask you specifically whether or not Mr. Schrode told you not to work on these, or work with these pre-cut steel bands, because they were made by non-union people? Did he tell you that? A No sir, he didn't.

Q What did he tell you?

[172] A At that time when I refused to put the bands on, I didn't know where they had come from, and I didn't know until all this went to court.

Q Did Mr. Schrode ever tell you why you were not to put, to work with these pre-cut steel bands? A No sir, he didn't.

Q All right.

[173]

C. E. FOSTER

was recalled as a witness by and on behalf of General Counsel . . .

FURTHER CROSS EXAMINATION

[174] THE WITNESS:

And because of the way materials are purchased and the purchase orders are filed in job files, the only way we can give you any information as to the amount of material purchased from Thorpe is through a commodity file with the value of material on it.

Now, 1962 our records indicate pipe covering materials in the amount of \$1,928.00, sundry materials in the amount of \$1,355.00.

MR. DEAKINS:

Does that mean purchased from Thorpe?

THE WITNESS:

Yes.

1963 records indicate preformed fittings in the amount of \$153.00. Prefabricated would be the better, that would be mitered —

MR. SICKLES:

Are you substituting that for preformed?

THE WITNESS:

Preformed, yes. Prefabricated fittings.

Prefabricated blankets in the amount of \$1,674.00. Pipe coverings in the amount of \$295.00. And sundry materials in the amount of \$180.00

[175] Q (By Mr. Mitchell) In 1962 you have indicated that you bought some pipe covering materials from Thorpe, but you can't tell us whether they were mitered or not? A Not unless you give me more time.

Q And in 1963 of those things that you just listed, can you tell what part of those were sent to the Victoria job that gives rise to this charge? A All of the prefabricated ells and part of these prefabricated blankets.

Q And what does that leave?

A That leaves pipe covering — now, sundries, I don't know how much of that was sent to Victoria.

Q Now, can you tell us from just that brief description of sundries whether or not that is in fact a prefabricated of a mitered fitting? A That could be a number of things, and I doubt that it would be. No, we would have that —

TRIAL EXAMINER:

You would have that-identified?

[176] Q (By Mr. Sickles) Mr. Foster, on the particular job in question that we have been discussing, you had your workmen prefabricate mitered fittings — A Yes sir.

Q — and you purchased some from Thorpe? A Yes sir.

Q Would you tell us why you purchased certain ones from Thorpe? A We purchased certain fittings from Thorpe and Pan-Rod as fill-ins as we got engineering changes, because our shop was not in operation at that time.

Q There was nothing in the specifications of the job that required you to purchase these from Thorpe? A There is nothing in the specifications that requires us to purchase them from anyone.

Q All right.

[177] So that your purchase from Thorpe was not directed by the customer? A No sir.

Q Or the general contractor? A It's our prerogative.

Q It's your prerogative? A Yes sir.

[178]

BROOKS BAKER

was called as a witness by and on behalf of the Respondent International . . .

TRIAL EXAMINER:

Give your name and address to the reporter, please.

THE WITNESS:

Brooks Baker, 810 Grove, Deer Park, Texas.

DIRECT EXAMINATION

Q (By Mr. Sickles) What is your occupation, Mr. Baker?

[179] A I am secretary of the Asbestos Workers
Local 22 and vice president of the International Association.

Q Now, are they two separate labor organizations? A Well, the International is the parent body.

Q (By Mr. Sickles) How long have you been secretary of Local 22? A I am in my thirteenth year.

Q And how long have you been International vice president? A I am in my seventh year.

Q And how long have you been a member of Asbestos Workers Local 22? A I am in my twentieth year.

[180] Q (By Mr. Sickles) Has your local instructed its members not to use the products of Thorpe? A Yes.

Q All right. Under all circumstances? A Yes, as far as I know.

Q Is the same true with Techalloy? A Yes.

Q Under all circumstances? A As far as I know, yes.

[181] · Q All right.

And why have you instructed your local members to take those positions? A We are not in agreement with Thorpe or Techalloy.

Q Well, perhaps you misunderstood my question, Mr. Baker.

Let me rephrase it.

TRIAL EXAMINER:

You mean you have no contract with them?

THE WITNESS:

No contract, no.

Q (By Mr. Sickles) Have you instructed your members not, who are employees of Armstrong, not to handle certain or use certain products of Thorpe? A Yes.

Q And why have you done that? A It would be a violation of our working agreement.

MR. DEAKINS:

I object to that as a conclusion of the witness.

MR. SICKLES:

I am asking for the position of the local.

TRIAL EXAMINER:

This is his reason, whether he is right or wrong on it.

MR. SICKLES:

This is correct.

TRIAL EXAMINER:

This is his stated reason for taking this action.

Q (By Mr. Sickles) All right. Then your action was —

TRIAL EXAMINER:

I am not going to find that it is a violation just on his statement.

Q And what section of the agreement?

A Article VI and VIII.

Q And in what manner do you feel that it would be a violation of the agreement?

MR. DEAKINS:

Now, I object to this as asking for a conclusion of the witness.

TRIAL EXAMINER:

Now, he has testified that he believes that it was a violation. Now, he has certainly then got to be able to testify as to why he believes the contract was violated. He can't just —

MR. DEAKINS:

I think he is interpreting the contract, Mr. Examiner. The contract speaks for itself.

TRIAL EXAMINER:

Oh, I agree with you there. When I am ruling on that, I am not going to go by his interpretation of the contract. This is as to his motive.

[183] Q (By Mr. Sickles) You have indicated that the Local's position is that it's a violation of the agreement. I ask what section. A Section VI and XIII.

Q.O.K. Fine.

Now, have you instructed members of your Local working for Johns-Manville not to handle pre-cut Techalloy bands? A Yes.

Q And why? A Violation of the contract.

Q Same violation? A Same violation.

Q Have you at any time instructed your members not to handle any products based on whether or not union men worked on the products? A No.

Q Have you instructed the employers of the alleg-

ed violation, Armstrong and Johns-Manville?

MR. DEAKINS:

I object to that question.

Q (By Mr. Sickles) I am sorry. Advised them. A Advised them, yes, I have.

TRIAL EXAMINER:

The question has been rephrased.

Q (By Mr. Sickles) The question was have you advised the employers of the alleged violation? A Yes.

[184] Q All right.

With reference to both Techalloy and Thorpe?

Q (By Mr. Sickles) I have in my hand, Mr. Baker, that which we have referred to today as a mitered fitting? A Right.

Q Do you agree with that description? A Yes, prefabricated.

Q Prefabricated.

And to your knowledge and your years in the trade, how has traditionally this end product come about?

A It's done by cutting miters from a half section of pipe covering.

Q By whom? A By the asbestos workers.

Q All right.

People covered by the collective bargaining agreement, coming under the jurisdiction of our —

[185] THE WITNESS:

Trade, Asbestos Workers'.

[186] Q (By Mr. Sickles) Mr. Baker, if Armstrong is performing a job and they use fittings that are mitered by employees of Armstrong, do you issue any instructions to your employees not to handle it?

A No.

Q (By Mr. Sickles) Suppose the mitering is done by employees of Armstrong who are not members of Asbestos Workers Local 22?

TRIAL EXAMINER:

Have you issued instructions not to handle the product, is that the —

MR. SICKLES:

Yes, it's an Armstrong job, and they bring onto the job mitered fittings.

Q (By Mr. Sickles) Now, first, these mitered fittings were not mitered, prefabbed, by members of your local. Would you issue any instructions, have you issued any instructions to your men not to handle them? A No.

TRIAL EXAMINER:

Well, there would be no way for you to know whether or not the Armstrong fittings were made by the Armstrong union members, or would you know it?

THE WITNESS:

Not necessarily.

TRIAL EXAMINER:

All right.

Q (By Mr. Sickles) All right. Let's assume that you knew, suppose they were made in another part of the country by employees of Armstrong who were not members of any local of the Asbestos Workers. Have you issued instructions not to handle them? A No.

Q (By Mr. Sickles) What is the purpose, as far as Local 22 is concerned, for decals to be affixed to mitered fittings? A For identification purposes.

Q Identification of what?

A Of whoever made it, whether it's fittings or accessories or whatever it might be.

Q By whom? You said whoever made it. A By the contractor that we are in agreement with that is applying the material.

Q All right. Let me ask you this question -

TRIAL EXAMINER:

You want the company that has made those fittings' identified?

THE WITNESS:

Rìght.

Q (By Mr. Sickles) You have a number of contractors in the city of Houston, do you not? A Right.

Q Roughly how many? A Fourteen, fifteen, something like that.

Q All right.

TRIAL EXAMINER:

Under contract with you?

THE WITNESS:

Under contract.

Q (By Mr. Sickles) All right. Do they all have an identical contract? A Identical contract.

Q Is one of them B&B? Did I hear that name earlier? A One of them is B&B.

Q Is one of them the Hebert Company? A One of them is the Hebert Company.

Q If B&B has a job and they are employing your workmen

[189] and onto the job are brought mitered fittings which have been mitered by employees of Hebert, who are also members of your union, will the employees of B&B put them on? A They would be instructed not to.

- Q Why? A It would be a violation of the agreement.
- Q Now, during this year have there been such instances of that in this area? A Yes.
- Q Would you specify the instances, the instance or instances? A I can think of one offhand, at the moment, of a contractor in agreement with us, Industrial Insulators, who has a job on which prefabricated fittings, et cetera, were brought to the job, bearing the decal of another contractor, which we were instructed not to apply and they haven't been applied.

Q All right.

And this other contractor, what was his name? A The one on this particular job, I believe, was Premet-co from Shreveport.

Q And they, does Premetco employ union members? A For the labels.

Q For the labels? A Employ -

[190] TRIAL EXAMINER:

But you wouldn't let them put them on?

MR. SICKLES:

That's correct.

- Q (By Mr. Sickles) And would you A Violation of the agreement. No sublet contract.
- Q And would you explain to the Examiner why you would not? A It's a violation of Article VI, no sublet.

TRIAL EXAMINER:

Well, I don't — maybe I don't understand it. The general contractor did have an agreement with the local, and then the supplier of these materials also had an agreement with the local.

MR. SICKLES:

No, two separate - well, I will ask Mr. Baker again.

Q (By Mr. Sickles) Who was the contractor that the material was delivered to? A Delivered to the applicant, or on the job is Industrial Insulators.

Q And -

TRIAL EXAMINER:

And you had a contract with them?

THE WITNESS:

Had an agreement with Local 22.

TRIAL EXAMINER:

Now, who was the supplier that sent them down?

THE WITNESS:

The supplier was an insulation contractor in agreement with another local union of the Asbestos Workers,

[191] of Local 21, Premetco in Shreveport, Louisiana. With the labels affixed, we did not apply.

Q (By Mr. Sickles) All right. Suppose that they had been supplied by another Houston contractor and the mitering had been done by members of Local 22, what would your instructions have been? A Instructed not to apply.

Q Not to apply? A It would have been a violation of the agreement.

Q All right.

To your knowledge are Techalloy stainless steel bands union made? A To my knowledge, no.

Q To your knowledge? A No.

TRIAL EXAMINER:

No.

Q (By Mr. Sickles) And have you ever instructed or had your local instruct the members not to handle Techalloy bands? A Only in this one instance where they were pre-cut.

Q Since this case has come about, but prior to September 13, the date of the injunction, have Techalloy bands been used by members of your union? A Yes.

TRIAL EXAMINER:

The ones that were not prefabricated?

[192] THE WITNESS:

The ones that were not prefabricated.

TRIAL EXAMINER:

We had that pretty clear, I guess, before.

Q (By Mr. Sickles) I show you, Mr. Baker, that which has previously been referred to as a pre-molded fitting. A Right.

Q To your knowledge do any members of Local 22 work on the pre-molding of fittings? A Work on the —

Q On the manufacturing of these fittings. A No, no.

Q Does your local have any instructions to its membership not to handle, apply or use pre-molded fittings? A No, they have no instructions.

TRIAL EXAMINER:

You take those from anyone?

Wherever they come from.

Q (By Mr. Sickles) There was testimony earlier to a fitting called Pam-Rod. Is that the same type of fitting that I have just showed you? A Well, I don't know what kind, all the types that they make. I have seen some, but I don't think that they mold a fitting in that shape. I think theirs is a cut fitting into a one-piece half.

Q All right. A I don't know, that might even be made by them, I don't

[193] know.

Q Well, when your — when pipe covering is manufactured in one half piece, does your union claim any jurisdiction to that, to the employees who work in the manufacturing? A No.

Q (By Mr. Sickles) Mr. Baker, would you describe what we have been talking about today, this so-called decal? A Well, it's a gummed label, not as large as the back of these matches here (indicating).

TRIAL EXAMINER:

It's a gummed label?

THE WITNESS:

It's a gummed label and it's not quite that large, about half that size. (Indicating.)

TRIAL EXAMINER:

And it has a number on it?

And it has a serial number on it.

TRIAL EXAMINER:

Yes.

MR. SICKLES:

Right.

THE WITNESS:

And it comes to us, we have them made up in rolls just like a roll of stamps, and it's already gummed, and it's onto a waxed paper, that you just peel it off of there, and it's the type of gum on there that

you

[194] just press it in and it automatically sticks itself.

TRIAL EXAMINER:

Who puts this on, the union or the union member or the company that manufactures it?

THE WITNESS:

The men who has charge of the shop.

TRIAL EXAMINER:

He puts it on?

THE WITNESS:

Making up the fabricated items, he either affixes it to the fitting, itself, or to a box.

TRIAL EXAMINER:

Well, is this at your request or does the company want them to do it?

It's our request, to identify it.

TRIAL EXAMINER:

Because you want the contractor identified when the material is received?

THE WITNESS:

Right.

TRIAL EXAMINER:

All right.

Q (By Mr. Sickles) All right.

Now, did you indicate there were numbers on it? A There are serial numbers.

TRIAL EXAMINER:

You have a record of those numbers so you can identify the contractor by the serial number?

THE WITNESS:

That's correct.

Q (By Mr. Sickles) And who keeps those records?

A They are kept in the business agent's office. He has a record book with the serial numbers, and they are issued to whatever contractor that is prefabbing materials, and the number of decals required are sent over to that shop

[195] and the number, each serial number is recorded in this book, in his permanent records in this book that we have in evidence.

TRIAL EXAMINER:

When a supply comes to a contractor, a general contractor, at the building site or the construction

site, where you have a contract, one of your men will then call you when this comes in to tell you either it has a decal or does not, if it does not?

THE WITNESS:

That's right.

TRIAL EXAMINER:

If it has a decal he will tell you what the number is?

THE WITNESS:

Right. If it has a number we verify the number.

Q There has been testimony regarding a meeting at the Engineers Club, two meetings at the Engineers Club, with various members of the Houston Insulation contractors. Would you advise us as to the discussions of that meeting?

[196] A I was invited to the meeting by the Contractors Association to discuss —

TRIAL EXAMINER:

This is the first meeting, stick to the first meeting, and then take the second one second.

THE WITNESS:

Actually, I can't remember the different discussions between one and the other, really.

TRIAL EXAMINER:

Yeah. Well, all right.

But, primarily, I mean, we were discussing the usage of the identification of the decals to fabricated materials that were fabricated off of the job site and sent to a job site.

TRIAL EXAMINER:

Right.

THE WITNESS:

And in our discussion of these decals and the use of them, I pointed out to them that we were not married to the decal, that that was our best means of identification, and that if they had a better way of identifying the materials, so that we would get the stuff applied once it got onto the job, we know that everything

[197] is all in order, come up with some recommended means of identifying. The only thing that was suggested was a tape with some kind of an imprint similar to what we have on a stamp.

TRIAL EXAMINER:

What was wrong with the decal you were using?

THE WITNESS:

I find no reason from my point of view. I see nothing wrong with it. But they were objecting to it. So I told them if they had a better means of identifying, tell me. We hadn't used this system all of our life. We could change. We had previously used a shipping ticket system. When a bill of materials was made up and shipped out, well, the man in charge would list all of the materials, where it was going to, and sign the ticket showing that it was made up according to

all rules of the agreement, and then we later developed this decal system.

The only suggested means of changing was the tape, and no one had any idea as to the cost or the amount that it would —

TRIAL EXAMINER:

There was no agreement reached that you could change from the decal to any other form of identification?

THE WITNESS:

No, that was the only suggested change was to the use of a tape, and there was no facts or figures available as to what it would cost or anything.

[198] TRIAL EXAMINER:

Did any representatives of these employers suggest no identification?

THE WITNESS:

Well, that could have been in the discussion, but to our mutual interest, well, we —

TRIAL EXAMINER:

You certainly weren't going to agree to that?

THE WITNESS:

No. We need some means of identifying.

TRIAL EXAMINER:

To police your contract?

THE WITNESS:

That's right.

Q (By Mr. Sickles) Now, you said identification a number of times, Mr. Baker. Identification of what? A Of the contractor making the materials.

Q You had a telephone discussion with Mr. Foster, did you not? A I have had quite a few.

Q That Mr. Foster testified to today? A Yes.

Q Regarding the problem of identification? A Right.

Q Did you make any statements to him regarding use of material, as to whether or not union men had been involved in the mitering? A No, no discussion on that.

Q There has been testimony that certain bands have been used in the Local 22 area, which are similar to the Techalloy

[199] bands, and they have been pre-cut, and that they have been used by your workmen. Do you have any knowledge of this? A I have no

knowledge of that, no.

Q If you had had knowledge would you have issued any instructions? A If we had knowledge that they were not made by the contractor —

Q No, that they were not pre-cut. A That they were pre-cut by someone other than the contractor applying them, then they would have been instructed not to use them.

CROSS EXAMINATION

Q (By Mr. Safos) I show you, Mr. Bak-[205] er, a document, a photocopy of a document, dated May 27, purportedly carrying your signature. The subject is "Decal Labels General Information."

Do you recognize this - A Yes, sir.

Q - as a document issued by you? A Yes, sir.

Q I direct your attention to the second sentence of the first paragraph. Would you read that, please, sir?

MR. SAFOS:

We mark it for identification as General Counsel's Exhibit 2.

> (The document above-referred to was marked General Counsel's Exhibit No. 2 for identification.)

Q (By Mr. Safos) Would you read that, please, sir? A "The purpose of this gummed label is to properly identify the Asbestos Worker who performed the work and to insure quality workmanship both on and off the construction job site."

Q Now, with reference to the words "Asbestos Worker," which are capitalized, to whom does that refer? A It means to me it refers to an asbestos worker working under the agreement that we operate under.

Q It refers to an individual employee? A If he is an employee of some contractor.

TRIAL EXAMINER:

With whom you have a contract?

Right.

Q (By Mr. Safos) Does it relate also to a member of the labor organization? A Not necessarily.

TRIAL EXAMINER:

Well, they would be included if they worked under the contract.

[207] MR. SAFOS:

They would be in the bargaining unit.

THE WITNESS:

We have people working at our trade that are not members of our labor organization.

Q (By Mr. Safos) . . .

In the third paragraph, the final sentence, would you read that, please, sir? A Is this the one, now, "The member who fabricates material and fails to affix the decal, signifying union made, is equally responsible as the member who applies the fabricated materials without decals"?

Q 'This does say "member," does it not? A It says "member," in this instance.

[208]

(The document above-referred to heretofore marked General Counsel's Exhibit No. 2 for identification, was received in evidence.) Q (By Mr. Safos) Mr. Baker, let me ask you this, are these documents, these decals, you refer to them as — I like your term better — A It's a gummed label.

Q A gummed label, I like that because it's more appropriate.

TRIAL EXAMINER:

With a serial number on it.

Q (By Mr. Safos) Yes. Are these gummed labels issued to any employer who is not in contractual relationship in this jurisdiction with Local 22? A No.

TRIAL EXAMINER:

No.

Q (By Mr. Safos) He could not get them, could he? A No, we have no reason to give them to him.

Q Well, then, if a witness testifies that he calls you

[209] when he sees a decal, what would that indicate, or calls Mr. Schrode at Local 22 to report that a commodity or item has come on the project that contains a decal?

TRIAL EXAMINER:

He also gives you the number.

A Sir, it would indicate that material is made under the contract.

Q (By Mr. Safos) Well, it couldn't be any other interpretation, if an employer is not in contractual

relationship, he cannot get them, is that it? A Well, we consider them union contractors, just like our union members.

CROSS EXAMINATION

Q (By Mr. Deakins) .

Q And it was offered in evidence there as Exhibit 1, in

[210] case you don't remember. A Oh, yes.

[211] Q (By Mr. Deakins) Now, Mr. Baker, you will recall that, the information that was shown on the pages of Charging Party's Exhibit 2, won't you, you remember that, don't you? A Basically, yes.

Q Yes.

Now, what do you sell those decals or those gummed labels for? What do you charge for them? A Not a thing.

Q Not a thing.

Now, you will recall when I questioned you with reference to that you examined that document and found that those decals had been issued only to members of the union, isn't that right? A That's right.

TRIAL EXAMINER:

Contracting employers.

Employers.

[212] Q (By Mr. Deakins) And they were named in there, weren't they, Mr. Baker?

A They were employees of a contractor who was also listed. Q Which employees you said were all members of your union, isn't that a fact? A Yes, sir.

Q All right.

Now, the contractor was shown by an initial over on the right-hand side of that page, wasn't he? A Well, most of them have long names and the names were shortened, some of them.

Q You had every other name of everybody to whom those gummed labels were issued written out in longhand, didn't you? A No.

MR. SICKLES:

I object. This is getting a little argumentative.

TRIAL EXAMINER:

It's repetitious. I'understand this system completely. I sustain the objection.

MR. DEAKINS:

Well, Mr. Examiner, the point I am trying to make is we have kind of gilded this lily. Mr. Baker is up here to indicate these were issued to the contractors when in fact he testified previously they were issued to the men.

TRIAL EXAMINER:

I sustain the objection.

[213] MR. SICKLES:

Don't fight with him. He so testified.

TRIAL EXAMINER:

Yes, he has agreed with you.

Q (By Mr. Deakins) All right, now who has these gummed labels made up, the union? A Yes.

Q Who, puts the numbers on them, the union? A Yes.

Q They have somebody put the numbers on them? A Yes, they are made in there.

Q No contracting party has anything to do with them except —

TRIAL EXAMINER:

.To receive them.

MR. DEAKINS:

— to receive them, if they receive them, or if their employee, who is a member of your union, receives them? A That's right.

Q Who are they delivered to? A Whoever comes over to pick them up from the company.

Q Well -

TRIAL EXAMINER:

I don't think this is material. I really don't. We are getting into an area —

A Sometimes it's a truck driver, sometimes.

Q Well -

TRIAL EXAMINER:

It should be the mechanics of it. What is important

ant is what was done and the purpose this was
[214] used for, and that we have established.

I don't care who picks them up or who makes them. It could be a truck driver.

Obviously, this is the union's gummed label. We know that.

MR. DEAKINS:

We are interested, Mr. Examiner, in -

TRIAL EXAMINER:

I am not, though.

MR. DEAKINS:

- who they were furnished to.

TRIAL EXAMINER:

We know that. To the contractors with whom they have contracts. This has been his testimony.

MR. DEAKINS:

Well, I disagree with the Examiner on that testimony.

Q (By Mr. Deakins) Now, when you talked about the man in charge, when you were talking about the shipping tickets, who did you mean to refer to then? A The man in charge of the shop that is making up whatever stuff is being made up.

Q Well, now, was the man in charge always a member of your union, to the best of your recollection?

A I would hope so.

[216] Q (By Mr. Deakins) But you never issued in your book a gummed label to anybody that wasn't a member of your union? And you so testified in District Court, didn't you? A Right.

[217] REDIRECT EXAMINATION

Q (By Mr. Sickles) Mr. Baker, are you an official of Local 113? A No, sir.

Q Mr. Baker, if a gentleman who did not belong to, was not a member of your union, but who was employed by a union insulation contractor, came to you for gummed labels, would you give them to him? A If he was working for a contractor in agreement, and prefabbing the material, sure.

Q Have there been any instances, to your knowledge, in the jurisdiction of your local where there were not gummed labels applied to a fitting, yet the fittings were applied on the job site? A Yes.

[219] JOSEPH R. SHRODE

was called as a witness by and on behalf of Respondent Local No. 22, . . .

TRIAL EXAMINER:

Give your name and address to the reporter.

THE WITNESS:

Joseph R. Shrode, S-h-r-o-d-e, 2220 Camille, Pasadena.

DIRECT EXAMINATION

Q (By Mr. Mitchell) Are you the business agent for Local 22. A Yes, sir.

Q How long have you been so employed? A Four years.

Q Mr. Schrode, do you remember having your attention called to the fact that some pre-cut stainless steel bands were delivered to the Johns-Manville job in the Texas City area? A Yes, sir.

Q How and under what circumstances was that information brought to your attention? A I was told by one of my — one of the employees of Johns-Manville, that these bands had arrived at their shop pre-cut.

Q Pre-cut. And where at their shop? [220] A At Houston, on Blodgett.

Q All right.

And upon receiving that information what action, if any, did you take? A Well, he had called me and asked me if he could — he was in the process of putting seals on these bands, and I instructed him that he should not do that, that he should not do that.

Q And why was that, Mr. Schrode? A Because these bands weren't cut by that particular shop that he was employed by.

Q That would have been the Johns-Manville shop? A Right.

Q' All right.

Now, when next did you have anything to do with these pre-cut bands that were delivered to the Johns-Manville job at Texas City? A I had a conversation with the foreman of that job, Mr. David.

Q Is that Mr. David here?

TRIAL EXAMINER:

Who testified in this proceeding?

THE WITNESS:

Right.

Q (By Mr. Mitchell) All right. And what did you tell him? A I told him that if these pre-cut bands arrived on that

[221] job without decals specifying that they were cut by Johns-Manville, not to apply them, Q All right.

Did you tell him or anybody else concerning these pre-cut steel bands that they were not to be applied because they were made by non-union labor?

A .No, sir, I sure didn't.

Q ... Now, Mr. Shrode, do you know whether or not Techalloy is in contract with Local 22 or any affiliate local of the International Union? A I know they are not in contract with Local 22.

Q All right.

Mr. Shrode, are you familiar with the fact that Techalloy products when delivered to the job sites in rolls of bands before they are cut have been worked on or applied by members of your local? A Yes, sir, on many occasions.

Q Well, then, can you explain for the record here the difference between working, your members working on Techalloy products before they are cut and refusing to work on

[222] Techalloy products when they are pre-cut or prefabricated? A Yes, sir, I will attempt to.

Q What is the explanation? A If they are delivered in the roll and cut to length on the job, that we claim is our jurisdiction of work, the cutting of these bands to length.

Q All right.

Now, are you familiar with this contract that has been introduced into evidence here as Charging Party's Exhibit No. 1? A Fairly.

Q Are you familiar with Article VI and Article XIII of this contract? A Yes, sir.

Q Do either of those articles form the basis of your position with regard to whether or not you will work on or with a product? A Yes, sir, very much so.

Q All right.

° Now —

TRIAL EXAMINER:

In other words, if in your opinion either Article VI or Article XIII has been violated, you will take some action with respect to the product?

THE WITNESS:

Right.

TRIAL EXAMINER:

That action will consist in telling your membership not to use them?

THE WITNESS:

That's right.

Q (By Mr. Mitchell) All right.

Now, you heard, I am sure, Mr. Roberts' testimony here earlier this afternoon in connection with some aluminum bands that were applied to some insulation down at the NASA base. A Yes, I heard that testimony.

Q Is there any distinction or explanation of why you would not instruct your members to work on that type of material and instruct your members not towork on the Techalloy pre-cut stainless steel bands In other words, what is the difference, if there is any?

[224] TRIAL EXAMINER:

Now, why was there no refusal to handle that when there was a refusal to handle the steel?

THE WITNESS

Is that the question?

TRIAL EXAMINER:

Yes.

MR. MITCHELL:

Yes.

THE WITNESS:

It wasn't to my knowledge that there was such a thing being done. Had I known it, I would have objected and —

TRIAL EXAMINER:

There is no distinction between aluminum and steel as far as your policy is concerned?

CROSS EXAMINATION

Q (By Mr. Safos) Just one or two brief questions.

To your knowledge Techalloy is not a member of
the Association and not subject to this contract; that's
correct, is it?

[225] A To my knowledge, no, they are not.

TRIAL EXAMINER:

In fact, you know they are not, don't you?

THE WITNESS:

I know they are not.

Q (By Mr. Safos) Your instructions, then, to Mr. David were purely on the basis of the fact that this should not be installed, you had heard that these bands had been pre-cut, of course it's been established that they were pre-cut by Techalloy — A Right.

Q — who doesn't have a contract, and your instructions were to the effect that he and the employees, insulation employees on the job, the Johns-Manville job, should not apply them because they had not been fabricated or pre-cut by, in this case, Johns-Manville, with whom you do have a contract? A Right.

[226]

JAMES R. EATON

was called as a witness by and on behalf of Respondent Local No. 113 . . .

[227] TRIAL EXAMINER:

Give your name and address to the re-

THE WITNESS:

James R. Eaton, E-a-t-o-n, 4525 Garfield Drive, Corpus Christi, Texas.

DIRECT EXAMINATION

Q (By Mr. Mitchell) Would you give us your occupation? A I am part-time business agent, Local 113.

Q How long have you been occupying that position? A Two years.

Q Mr. Eaton, I want to direct your attention to this job of the Armstrong Company at Victoria, and ask you when it was that your attention was first directed to some mitered fittings that were delivered to that job. A Sometime in July. I don't remember the exact date.

Q All right.

And who was it that called these mitered fittings to your attention? ^A Well, in the course of routine checking of jobs, and it was — my attention was called to it by other members employed on that job.

Q All right.

And after your attention was called to it, what did you do? A Well, I contacted the foreman over there and asked him

[228] to make those fittings and he said no, that they were shipped in, and I asked who made them, and he said he did not know.

Q (By Mr. Mitchell) What was your purpose in making that inquiry? A I wanted to know who made the fittings, who they were made by.

Q All right.

And why did you want to know that? A For the preservation of our contract.

Q All right.

And then who did you attempt to talk to, if anyone, to

[229] determine who made or fabricated these fittings? A They were not made on the job, so when —

Q No, I ask you now who did you talk to in connection with, say, Armstrong or anybody else to determine who made these fittings? A I talked to Mr. Williams and one time Mr. Foster and one time Mr. Lunda over the telephone.

Q All right.

Who is Mr. Williams? A Lynn Williams, he was the field superintendent for Armstrong.

Q All right.

And Mr. Foster? A He is his direct -

Q Is that the same Mr. Foster that testified here this morning? A Yes, sir, same one.

Q And then you mentioned Mr. Lunda. Who is he?
A He is evidently over the Armstrong office here. I talked to him one time over the phone.

Q All right.

Now, what was your conversation with these men, Foster and Williams? A You just want to go through, all the way through from —

Q Well, I want you to give us, if you can tell us what

[230] the conversation was about, and what the sense of it was. A Well, Mr. Williams and I, he came down and I asked him who made the fittings, and he said, "We made them," and I said, "Well, can your furnish me proof?" of course, and he said, "Yes." So he went ahead and had a letter wrote to me.

Q All right.

Now, before we get to that, during any of this conversation that you had with either of these men, was any objection made by you or any inquiry made by you as to whether or not these fittings had been made by union or non-union people? A No.

Q Did you make any such inquiry at all? A No.

Q (By Mr. Mitchell) All right. I think you said that as a result of that conference and as a result of talking to Mr. Lunda over the telephone you were sent a letter? A Yes.

Q I am going to hand you what has been marked as

[231] Respondent Local Exhibit No. 1 and ask you whether or not that is a copy of the letter that you received from Mr. Lunda. A It is.

(The document above-referred to was marked Respondent Local Exhibit No. 1 for identification.) Q (By Mr. Mitchell) Was that letter written after you had had your conferences with Mr. Foster and Mr. Williams at the job site? A Well, I don't remember the exact date. But I had talked to Mr. Williams prior to this. I don't remember at the time whether Mr. Foster was down there before or after this letter.

Q All right.

Now, I want to ask you this, Mr. Eaton.

Had you received any information at all or did you have any information at all that Armstrong had made these fittings several years ago on another job? Had that representation ever been made to you? A I could explain that this way. We were discussing, I believe, Mr. Williams and I, the local cost that they had, that they took this job. He made the remark at that time that they had a lot of this stuff on hand left over from other jobs. That was just a casual remark on his part.

[232] MR. MITCHELL:

Mr. Hearing Officer, I am going to offer Respondent Local Exhibit No. 1 into evidence at this time, it being material in showing the substance of the conversations that took place between this witness and Armstrong's managers and executives.

TRIAL EXAMINER:

Any objection?

MR. DEAKINS:

Mr. Examiner, I object to this letter as there has been no showing that the Corpus Christi contract had an Article VI or XIII in it.

TRIAL EXAMINER:

That what?

MR. DEAKINS:

It doesn't prove anything, that is, assuming the union's contention is correct.

TRIAL EXAMINER:

Well, it refers certainly to the prefabricating of fittings on the Victoria job. It's a statement they were all made in the Houston shop by Carmichael, a member of the local. It would appear to be, in

~ view of

[233] what actually transpired here, but I am going to accept it. It's a statement by Armstrong, itself.

MR. DEAKINS:

All right.

TRIAL EXAMINER:

Which, if my recollection is correct, the statement . is incorrect.

MR. SAFOS:

I think his statement is correct.

"(The document above-referred to, heretofore marked Respondent Local Exhibit No. 1, was received in evidence.)

at till and iv story

THE WITNESS:

I don't have it with me. I have it in my room.

MR. MITCHELL:

Your contract?

THE WITNESS:

Yes. Ours is VI and XI. Yours is VI and XIII.

MR. SICKLES:

May I direct your attention to Article I of the collective bargaining agreement, Mr. Examiner, under which a Houston insulating contractor working in the 113 territory would abide by the working conditions down there. We have been talking about this contract, and this job actually took place in the Local 113 Territory.

TRIAL EXAMINER

I assume that, yes.

[237]

CROSS EXAMINATION

Q (By Mr. Safos) Mr. Eaton, who was the foreman on the Victoria job that you talked to? A Bob Graham.

Q Bob Graham.

Is he a member of Local 113? A He is.

[238] Q (By Mr. Safos) I just wanted to know if he asked you whether he could install them without the decals. A I don't remember. I am sure he did. I probably told him "No."

Q Did you tell him what would happen if he did?

A Well, yes.

Q What was that? A That any member who—
it's stated as part of our policy of our local that any
member who installs a fitting without the decal or
without us knowing where it's made will be brought
before the Executive Board.

[239] TRIAL EXAMINER:

He is subject to disciplinary action?

THE WITNESS:
Right.

GENERAL COUNSEL'S EXHIBIT NO. 2

May 27, 1963

GENERAL INFORMATION SUBJECT: DECAL LABELS

The General Executive Board in regular session in March 1961, approved the use of a gummed Decal Label to be affixed to insulating materials, such as fittings, packages of pre-cut lagging for specific items, bundles of accessories, etc., which have been pre-prepared, in any degree, off the actual job site where the materials are applied. The purpose of this gummed label is to properly identify the Asbestos Worker who performed the work and to insure quality workmanship both on and off the construction job site.

Numbered gummed Decal Labels are supplied by the General Office through the Business Agent to the worker in charge of preparing the materials off job site, who shall then report the kind, quanity, and etc., to the Business Agent in order for proper assurances of application. This procedure of labeling was announced and explained in the Asbestos Workers Journal in May, 1961, and was announced and discussed at Local Union and Joint Trades Board Meetings on several occasions since March, 1961. Labels have been available in ample quantitites since June, 1961.

The International usage of "Decals" affixed to fabricated fittings, items or boxes or bundles of miters or lagging or accessories made up by our membership to be used at a location other than the fabrication shop site is now in its second year and all members are expected to abide by this International practice established by the General Executive Board. The member who fabricates material and fails to affix the "decal", signifying union made, is equally responsible as the member who applies the fabricated materials without "decals."

Reports indicate that there may be some materials being received on some jobs today without proper identification being supplied. In event this should happen on your job, please contact the Business Agent -- so proper investigation can be made and appropriate action taken to insure proper credit for work performed.

Sincerely and fraternally yours, (Signed) BROOKS BAKER Brooks Baker

RESPONDENT'S LOCAL EXHIBIT NO. 1

ARMSTRONG Contracting And Supply Corporation

7310 Ardmore P. O. Box 14009 Houston 21, Texas July 17, 1963

Telephone: Riverside 7-5530

International Association of Heat and Frost Insulators and Asbestos Workers Local No. 113 P. O. Box 1112 Corpus Christi, Texas

Attention: Mr. J. R. Eaton, Business
Agent

Gentlemen:

Subject: Prefabricated fittings

E. I. du Pont de Nemours Job Victoria, Texas

This is to advise that it is the practice of Armstrong Contracting and Supply Corporation of Houston, Texas to fabricate all mitered fitting covers utilizing Asbestos Workers at all times. All fittings which have been fabricated and shipped to the above subject job were made in our Houston shop by Mr. B. D. Carmichael, a member of Local 22.

With the above facts in hand we request that you instruct your membership to proceed immediately with

the application of these fittings. Your prompt attention to this matter will be sincerely appreciated.

Very truly yours,

ARMSTRONG
CONTRACTING AND
SUPPLY CORPORATION

(Signed) N. W. LUNDA N. W. Lunda District Manager

KC

R. D. Graham

L. J. Williams

RESPONDENT'S LOCAL EXHIBIT NO. 2

AGREEMENT July 10, 1961 thru June 30, 1964

Individual Employer
with
Insulating Contractors
ASBESTOS WORKERS
LOCAL NO. 113
Corpus Christi, Laredo and
Harlingen, Texas

AGREEMENT.

THIS AGREEMENT, made and entered into this 10th day of July, 1961, by and between MASTER INSU-LATION ASSOCIATION (hereinafter called the "Employer") and International Association of Heat and Frost and Asbestos Workers, Local No. 113 of Corpus Christi, Laredo, and Harlingen, Texas (hereinafter called the "Union").

ARTICLE I

It is hereby agreed that the provisions of this Agreement shall be binding upon the Employer and upon the Union, within a radius of Thirty (30) miles from City Hall—outside territory situated half way to any other affiliated Local Union, Rand & McNally's map shall be considered the Official Map of the Trade. All places on said map touched or intersected by radius circle shall be considered within the territory, and in

such cases the entire town or city limits of such places shall be considered within the territory.

The Employer further agrees that on all operations outside the chartered territory of the Union, he will abide by the rates of pay, rules and working conditions established by collective bargaining agreement between the local insulation contractors and the local union in that jurisdiction.

ARTICLE · II

The "Regular" work day shall be Monday thru Friday, eight (8) hours between 8 a. m. and 4:30 p. m.

ARTICLE III

The ratio of Improvers may equal but not exceed a ratio of one (1) Improver to four (4) Mechanics employed in a shop. No Improver shall execute work unless in company with a mechanic.

ARTICLE IV

All labor in excess of the "regular" work day, on Saturday, Sunday and observed holidays, shall be known as overtime and shall be paid for at a double time (2) rate of wages if ordered by the Employer. The observed holidays are: New Year's Day, Decoration Day, Independence Day, Thanksgiving Day, and Christmas Day. No work shall be performed on Labor Day except in special cases of emergency and then only when triple (3) time is paid.

Output

Output

Day except in special cases of emergency and then only when triple (3) time is paid.

When a holiday falls on Sunday the following Monday shall be observed as the holiday.

ARTICLE V

There shall be a Trade Board consisting of three (3) members of the Corpus Christi, Harlingen, and Laredo, Texas, insulation contractors, and three (3) members of Local No. 113, and said Trade Board shall have the right to investigate all labor operations of the parties to this Agreement within its prescribed limits so far as any of the provisions of this Agreement are involved, in connection with which any question may arise, and for this purpose shall have the right to summon, question, and examine any party to this Agreement, or their representative or Agents.

There shall be no lockouts except when of a general nature and ordered by a Building Trades Employers Association, and approved by the Corpus Christi, Harlingen, and Laredo, Texas contractors, or strikes except when of a general nature and ordered by a Building and Construction Trades Council with the approval of the International Association of Heat and Frost Insulators and Asbestos Workers. Trade disputes and grievances shall be settled without cessation of work, and in cases where the parties to this agreement fail to agree the matter in dispute shall be referred to the Joint Trade Board.

In case any disputes arise, notice must be given in writing to the Secretary of the Trade Board by aggrieved party within 30 days. The Trade Board shall be governed by the following By-Laws:

- A. Regular meetings shall be held quarterly.
- B. Special meetings shall be called by the Chairman of the Trade Board on written request of either side, stating object for which meeting is to be called, but no matters shall be discussed at special meetings except those designated in said written request.
- C. Four (4) shall constitute a quorum, two (2) from each side, neither shall cast more ballots than the other.
- D. The vote on all questions of violations of this Agreement shall be by secret ballot.
- E. It shall require a majority vote to carry any question.

ARTICLE VI

The Employer agrees that he will not sublet or contract out any work described in Article XI. It is also agreed that no member of a firm or officer of a corporation or their representative or agents shall execute any part of the work of application of materials.

ARTICLE VII

The Employer hereby recognizes the Union as the exclusive collective bargaining agent for employees classified as Mechanics and Improvers who perform any of the duties as described in Article XI hereof.

ARTICLE VIII

The following wage rate shall apply:

July 10, 1961 to June 30, 1962 —
Mechanics \$3.90 per hour
1st Yr. Improver—50% of Mechanic rate
2nd Yr. Improver—60% of Mechanic rate
3rd Yr. Improver—70% of Mechanic rate
4th Yr. Improver—80% of Mechanic rate
\$0.10 Welfare
\$0.10 Pension

July 1, 1962 to June 30, 1963 —
Mechanics \$4.05 per hour
1st Yr. Improver—50% of Mechanic rate
2nd Yr. Improver—60% of Mechanic rate
3rd Yr. Improver—70% of Mechanic rate
4th Yr. Improver—80% of Mechanic rate
\$0.10 Welfare
\$0.10 Pension

July 1, 1963 to June 30, 1964 inclusive—
Mechanics \$4.15 per hour
1st Yr. Improver—50% of Mechanic rate
2nd Yr. Improver—60% of Mechanic rate
3rd Yr. Improver—70% of Mechanic rate
4th Yr. Improver—80% of Mechanic rate
\$0.10 Welfare
\$0.10 Pension

It is not intended that Improvers, now members, will receive a cut in pay rates.

ARTICLE IX

Employees shall receive board when on jobs requiring same in the amount of \$6.00 per day worked and shall receive railroad transportation and local car or bus fares in excess of two city fares daily figured from Corpus Christi, Laredo, and Harlingen, Texas, City Hall to job and return to City Hall. Night traveling shall be paid for at single time, except in cases where berth is provided, when no traveling time shall be paid. When boarding on out-of-town jobs they shall receive all transportation expenses expended.

ARTICLE X

ARTICLE XI

This agreement covers the rates of pay, rules and working conditions of all employees classified as Mechanics and Improvers engaged in the preparation, distribution and application of pipe and boiler coverings, insulation of hot surfaces, ducts, flues, etc., also the covering of cold piping and circular tanks connected with the same and all other work included in the trade jurisdictional claims of the Union.

This to include alterations and repairing of work similar to the above and the use of all materials for the purpose mentioned.

ARTICLE XII

Employees shall be considered "at work" for a Shop from time they accept employment and that they shall proceed to and execute said work in a faithful workmanlike manner and not quit same until after reasonable notice has been given Employer. Mechanic in charge of out-of-town operations where board is paid shall complete the same before leaving Shop of Employer. Complaints arising from inferior workmanship shall be given consideration by both parties to this agreement and all found contributing to it, penalized.

ARTICLE XIII

The Union shall have a permanent office address with telephone service, where their Business Agent or authorized officer can be communicated with between Monday thru Friday between 8:00 a. m. and 5.00 p. m. each working day for the purpose of answering inquiries and providing necessary service to the trade.

ARTICLE XIV

The Union agrees there shall be no limitations or restrictions placed upon the individual working efforts of employees.

ARTICLE XV

Either party to this Agreement desiring to renew it in present form or with change or amendment shall make known such intention in writing ninety (90) days prior to the expiration of this Agreement.

ARTICLE XVI

This Joint Trade Agreement shall become effective July 10, 1961 and shall be rigidly observed until its expiration June 30, 1964, during which time neither party to it shall continue in force or create any rule or By-Laws conflicting with its provisions.

ARTICLE XVII

Any portion of this Agreement found to be in violation of existing federal or state laws shall become in-operative and the balance of the Agreement as such, continue in full force and effect until date of expiration.

ARTICLE XVIII

Welfare Plan:

The terms and conditions of the Welfare plan, including the method of administration, which was developed and put into effect in October, 1953, shall continue for the duration of this Agreement, with the exception of the increases as set forth in Article VIII of the Agreement, all monies to be used for the purpose of said fund as set out in the Trust Agreement,

which is attached to this agreement and is incorporated herein by reference.

Payment of all Welfare Fund monies is due weekly as set forth in the Trust Agreement. One copy of the Welfare payments shall go to the Administrator, as designated by the Welfare Trustees, and one copy shall be sent to the Local Business Agent, No. 113.

ARTICLE XIX

Pension Plan:

A Pension plan together with the method of administration shall be developed and put into effect as soon as is reasonably possible. In the meantime, the employers contribution to such plan shall be placed in escrow with some Bank or Trust Co., of Corpus Christi, Texas, acceptable to both parties. The present Welfare trustees shall be the Trustees for the pension plan and shall be known as the Welfare and Pension Trustees. The employers contribution to the pension and welfare fund shall be in excess of wages, overtime, withholding tax, social security tax, and others. (Payment of all monies to be weekly as wages).

ARTICLE XX

Transportation:

Transportation on jobs beyond the twenty (20) air mile radius shall be figured from the nearest city where living accommodations are available. The mileage shall be figured from the city hall of the nearest city where living accommodations are available to and from the job site daily at the rate of \$0.08 per

mile. All employees, when traveling between chartered cities (at shops request) shall be paid travel time plus \$0.08 per mile to and from the job.

When an employee receives expense allowance provided in the above paragraph, he shall be reimbursed for his expenses in traveling to the job one time at the commencement of his employment and one time upon his return from the job when his employment is terminated by the employer. The rate of expenses for traveling in this instance shall be \$0.13 per road mile, figured from the city hall of Corpus Christi, Harlingen and Laredo, Texas to the job site. When transportation is furnished by the contractor and traveling is done on the contractors time, no transportation or travel time will be due employees. Night traveling shall be paid for at single time, except in cases where berth is provided, when no traveling time shall be paid.

Zone Rates: Rates to be figured from City Hall of Chartered cities, Corpus Christi, Harlingen and Laredo, Texas.

0 miles to 5 miles — \$0.00 per day—Zone 1 5 miles to 10 miles — 0.50 per day—Zone 2

10 miles to 15 miles — 1.30 per day—Zone 3

15 miles to 20 miles — 2.50 per day—8one 4 Padre and Mustang Island Zone:

Employees will travel to the end of Zone 1 free, then he will be paid \$0.08 per road mile to the job and return to Zone 1 daily. Employers will pay the daily toll charge to all island jobs. Travel Expense

to Reynolds Metal Co. will be \$1.50 per day per Employee.

When board is paid at Port Aransas daily travel will not be paid.

ARTICLE XXI

Subsistence:

All employees applying, mixing or distributing materials shall receive subsistence when on jobs twenty (20) air miles from the city hall of chartered cities of Corpus Christi, Laredo and Harlingen, Texas, in the amount of \$6.00 per day worked, including rainy days and holidays. When an employee does not report for work except on holidays, he will forfeit his subsistence. An Employee will not forfeit his subsistence when excuses are made by shop foreman such as material shortages, etc. In no instances shall these daily expenses be prorated.

ARTICLE XXII

Wages and Expenses:

Payment of all wages and expenses shall be weekly on the job. Unless mutually agreed otherwise, the regular work week shall end Sunday midnight. Pay day shall be the following Wednesday on the job by the regular quitting time, except may be delayed twenty-four (24) hours provided the envelope containing the checks is postmarked not later than 6:00 p.m. of the preceding Tuesday. Any violation of the rules concerning delivery of pay checks shall be dealt with by the Joint Trades Board. When an employee is terminated by his employer, he shall be paid in full.

ARTICLE XXIII

Smoking:

Employees working on jobs where no smoking is permitted, the contractor shall exhaust every effort to create a safe designated area where the employee may smoke at least once in the morning and once in the afternoon. This is a privilege and only a reasonable amount of time is used for this purpose.

ARTICLE XXIV

The Record and Change Area:

At no time shall an employee be required to punch a time clock, or keep any other method of time. This shall be the duties of the foremen in charge. At no time shall employees working on any job be required to pick up brass, chits or any form of identification, such as numbers, cards, etc., either going on or off the job.

Employees will report to a designated area chosen by the superintendent or foreman in charge of the job. Employer shall provide change shacks or rooms suitable for changing clothes and storing of tools.

ARTICLE XXV

Scaffolding:

Safe adequate scaffold shall be provided on all jobs. On operations above twenty (20) feet, scaffolding shall consist of not less than two (2) 2x10 walk boards tied together, side by side. Guard rails must be provided on each landing. Under no circumstances will wire, cable, or rope be accepted as a guard rail. Any

dispute arising about the above mentioned scaffolding shall be settled jointly by the job steward, the Business Agent, and the contractor.

Employer shall furnish leather gloves on Foamglas jobs and on jobs where metal lath backed insulation is used, saws on Foamglas jobs, and fans or blowers for ventilation in attics or skirts of towers or other locations when needed. Maximum size of buckets on all jobs shall be fourteen (14) quarts. Employers shall furnish ice water on all jobs.

ARTICLE XXVI

Uniforms:

Each employee shall, at his own expense, furnish his own work uniform. Such uniform to be approved by the Local Union.

ARTICLE XXVII

Show-Up Time:

An employee must be notified the day before by the Employer if he is not to report for work. When an Employer fails to comply with the above working rule, each Employee that reports for work, shall receive pay for two (2) hours. The Employee shall remain on the job for two (2) hours if requested to do so by the Employer.

ARTICLE XXVIII

When an employee is requested by the employer or job foreman to work out in the rain, the employer must furnish all necessary equipment, such as raincoats, hats, boots, etc. Safety equipment will be furnished by the employer.

ARTICLE XXIX

The term of this Agreement shall commence on July 10, 1961, and shall continue in effect until midnight on the 30th day of June, 1964, and shall renew itself for terms of one year, from year to year thereafter, unless either the Employer or the Union shall give notice in writing to the other as stated in Article XV.

ARTICLE XXX

This Agreement shall be signed by each individual Employer and the International Association of Heat and Frost Insulators, and Asbestos Workers Local Union No. 113.

ARTICLE XXXI

In event International should cancel Board on a nation-wide basis, this agreement will conform.

SIGNED:

INTERNATIONAL ASSOCIATION OF HEAT
AND FROST INSULATORS AND ASBESTOS
WORKERS
LOCAL NO. 113
Per JACK M. HOOVER
President
Per JACK K. OUALLINE
Secretary

MASTER INSULATION
ASSOCIATION
Per JOHN FOSTER, President
Per CY LOPP, Secretary

EMPLOYERS:
Per C. J. LOPP,
The Gilmin Co., Inc.
Per JOHN FOSTER,
Precision Insul. Co., Inc.
Per A. W. MORGAN,
Morgan Co.
Per W. D. LEONARD,
Thome Products Co.

CHARGING PARTY'S EXHIBIT NO. 1

MEMORANDUM OF AGREEMENT

THIS AGREEMENT, made and entered into this 1st day of July, 1962, by and between Houston Insulation & Contractors Association (hereinafter called the "Employer") and International Association of Heat and Frost Insulators and Asbestos Workers' Local No. 22 of Houston, Galveston, Beaumont, and Port Arthur, Texas, (hereinafter called the "Union").

ARTICLE I

It is hereby agreed that the provisions of this Agreement shall be binding upon the Employer and upon the membership of the Union individually and as members of the Union within a radius of thirty (30)

miles from City Hall — outside territory situated half way to any other affiliated Local Union. Rand & Mc-Nally's map shall be considered the Official map of the Trade. All places on said map touched or intersected by radius circle shall be considered within the territory, and in such cases the entire town or city limits of such places shall be considered within the territory.

The Employer further agrees that on all operations outside the chartered territory of the Union he will abide by the rates of pay, rules and working conditions established by collective bargaining agreement between the Local insulation contractors and the local union in that jurisdiction. The Employer may send a Mechanic, and in the event of insufficient supply of local labor in that territory, such additional employees as may be necessary and such employees shall receive in addition to transportation costs the highest wage rate, board allowance, fringe benefits and other conditions of employment of either that jurisdiction or established in this agreement.

The purpose of this Agreement is to fix the wages, hours and conditions of employment between the Employer and Employees represented by the Union who may from time to time be employed by the Employer; and to prevent work stoppages, strikes, lockouts, slow downs, sit downs and any other incidents which tend to disrupt the normal and proper Employer and Employee relationship.

ARTICLE II

The regular work day shall be eight (8) hours be-

tween the hours of 8:00 A. M., and 4:30 P. M., or such regular work day as may be established as practice on any particular job by the Building Trades Council.

ARTICLE III

The ratio of Improvers may equal but not exceed a ratio of one (1) Improver to four (4) Mechanics employed in a shop. No Improvers shall execute work unless in company with a Mechanic.

ARTICLE IV

All labor in excess of the "regular" work day, on Saturday, Sunday and observed holidays, shall be known as overtime and shall be paid for at a Double (2) rate of wages if ordered by the Employer. The observed holidays are: New Year's, Decoration Day, Independence Day, Thanksgiving Day, and Christmast Day. No work shall be performed on Labor Day except in special cases of emergency and then only when triple (3) time is paid.

When a holiday falls on Sunday the following Monday shall be observed as the holiday.

ARTICLE V

There shall be a Trade Board consisting of four (4) members appointed by the Houston Insulation Contractors Association and four (4) members appointed by Local No. 22, and said Trade Board shall have the right to investigate all labor operations of the parties to this Agreement within its prescribed

limits so far as any of the provisions of this Agreement are involved, in connection with which any question may arise, and for this purpose shall have the right to summon, question, and examine any party to this Agreement, or their representative or agents.

There shall be no lockouts except when of a general nature and ordered by a Building Trades Employers Association, and approved by the Houston Insulation Contractors Association; or strikes except when of a general nature and ordered by a Building and Construction Trades Council with the approval of the International Association of Heat and Frost Insulators and Asbestos Workers. Trade disputes or grievances shall be settled without cessation of work, and in cases where the parties to this agreement fail to agree the matter in dispute shall be referred to the Joint Trade Board.

In case any disputes arise, notice must be given in writing to the Secretary of the Trade Board by a grieved party within fourteen (14) days.

The Trade Board shall be governed by the following By-Laws:

- (a) Regular meetings shall be held monthly.
- (b) Special meetings shall be called by the Chairman of the Trade Board on written request of either side, stating object for which meeting is to be called; but no matters shall be discussed at special meeting except those designated in said written request.

- (c) Six (6) shall constitute a quorum, three (3) from each side; neither shall cast more ballots than the other.
- (d) The vote on all questions of violations of this Agreement shall be by secret ballot.

ARTICLE VI

The Employer agrees that he will not sublet or contract out any work described in Article XIII and the Union agrees not to contract, sub-contract or estimate on work nor allow its membership to do so nor to act in any trade capacity other than that of workman. It is also agreed that no member of a firm or officer of a corporation or their representative or agents shall execute any part of the work of application of materials and in no case shall any member of the Union estimate on or give any labor figures.

ARTICLE VII

The Employer hereby recognizes the Union as the exclusive collective bargaining agent for Mechanics and Improvers who perform any of the duties as described in Article XIII hereof.

ARTICLE VIII

The following shall be the wage scale paid during the term of this Agreement:

(a)	The regular wage rates shall be as follows f	rom
	July 1, 1962 to July 1, 1963.	
	Journeyman\$	4.175
	4th Year Improver	
13.	3rd Year Improver	
1	2nd Year Improver	2.55
,	1st Year Improver	
(b)	The regular wage rates shall be as follows f	rom
	July 1, 1963 to July 1, 1964.	
	Journeyman\$	4.325
	4th Year Improver	
	3rd Year Improver	
	2nd Year Improver	
	1st Year Improver	4
(c)	The regular wage rates shall be as follows f	rom
*	July 1, 1964 to July 1, 1965.	
	Journeyman\$	4.475
	4th Year Improver	
. *	3rd Year Improver	
	2nd Year Improver	
	1st Year Improver	2.45

All wages and expenses shall be paid weekly on the job by cash or company check and Employer shall make local arrangements for cashing checks drawn on banks located outside of Lu 22 Area. For the purpose of this provision, the regular work week shall end Sunday at midnight. Payday for each week shall

be at or before the end of the workday on the Wednesday following the end of the work week, except that if payment is made by check mailed in the United States mails, (prior notice that checks are mailed must be given to employee) and postmarked not later than 6:00 o'clock P.M., on the preceding Tuesday, payment may be delayed for twenty-four (24) hours without penalty. In the event a holiday is observed on Monday, the pay period limits shall be extended twenty-four (24) hours.

If any Employee shall be laid off, such Employee shall be paid all wages due at the time of such layoff.

The violation of any provision of this Agreement concerning the delivery of paychecks shall be handled by the Joint Trades Board.

ARTICLE IX

- (a) On all jobs located within a radius of 20 miles of the City Hall of Houston, Galveston, Beaumont or Port Arthur, Texas, each Employee who is regular assigned to work and reports to work during the regular work week but who is not permitted to work due to conditions beyond the control of such Employee, shall be paid two (2) hours straight time at the regular rate. Such Employees must remain on the job site for the entire time when they are paid for work which they do not perform unless released by the foreman in charge of the job.
- (b) Employees working on jobs within a radius of 20 miles of the City Hall of Beaumont or Port

Arthur, Texas, shall receive the following expense allowances:

0 to 8 mile radius	 nothing		
8 to 10 mile radius	 \$1.00 per day		
10 to 13 mile radius	 \$1.50 per day		
13 to 20 mile radius	 \$2.50 per day		

(c) Employees working on jobs within a radius of 20 miles of the City Hall of Houston or Galveston, Texas, shall receive the following expense allowances:

0 to 10	mile i	radius .	 	 noth	ing .
10 to 1	3 mile	radius	 1.	 \$1.50	per day
		radius		 	per day

(d) Employees engaged in preparing, applying, mixing or distributing materials for the Employer shall be reimbused for living expenses when working on jobs out of Houston, Galveston, Beaumont of Port Arthur, Texas, if such jobs shall be 20 miles or more from the City Hall of the various named cities at the following rates:

Six Dollars (\$6.00) per day for each day worked up to a maximum of Forty-two (\$42.00) per week.

Such expenses shall be paid for rainy days and holidays provided the Employee reports to work at the job site on rainy days and remains at such place until excused by the Foreman or person in charge of the work.

In no instance shall daily living expenses be pro rated.

Airline miles shall be used in computing the distances set forth in paragraphs a, b, c, and d above.

(e) An Employee who shall be entitled to receive expense allowance provided in paragraph d above, shall be reimbursed for his personal expenses in traveling to the job site one time at the time of the commencement of his employment and for the expenses upon his return when such job is ended or his employment is terminated Employer.

Employees entitled to the personal travel expenses provided in this paragraph, shall be reimbuised at the rate of thirteen and one-half cents (13-1/2c) per road mile from the nearest City Hall of either Houston, Galveston, Beaumont, or Port Arthur, Texas.

An Employee entitled to receive the living expense allowance provided in paragraph (d) above shall be reimbursed for daily travel to and from the job site at the rate of seven and one-half cents (7-½c) per road mile to within five (5) miles of the living accommodations nearest to the job site.

ARTICLE X

It is understood and agreed that the Welfare Plan, together with the method of administration which was developed and put into effect on December 1, 1952,

shall be continued in effect during the term of this Agreement in accordance with its present terms and conditions as the same may be modified and improved until legal action has been approved to convert the plan to a program operated exclusively by the Union at which time the money provided shall be added to the Employees wages and deducted therefrom.

The sum of Ten cents (10c) per man hour worked shall be contributed to the Welfare Plan by the Employer.

All contributions to the Welfare Plan by the Employer shall be in excess of wages for the purpose of computing overtime, withholding tax, social security tax and otherwise.

ARTICLE XI

A Pension Plan together with the method of administration as developed and put into effect, shall be continued in effect during the term of this Agreement, in accordance with its present terms and conditions, and as the same may be modified and improved until legal action has been approved to convert the plan to a program operated exclusively by the Union at which time the money provided shall be added to the Employees wages and deducted therefrom.

'The Employer's contributions to the Pension Fund shall be Ten cents (10c) per hour worked until expiration of agreement.

The Employer's contributions to the Pension Fund

shall be in excess of wages, overtime, withholding tax, social security tax and others.

ARTICLE XII

Employer agrees to deduct money for dues, etc., from the pay of all employees who are members of Local Union No. 22 and from such Travelers who are members of any other Local Union who are working for such Employer under the jurisdiction of this Agreement, provided such Employee authorizes the deduction of such moneys in writing in accordance with forms agreed upon. Such authorization may later be revoked in writing by the Employee. In no event shall Employer be liable or responsible to the Union for failure to collect such dues.

ARTICLE XIII

The Agreement covers the rates of pay rules and working conditions of all Mechanics and Improvers engaged in the preparation, distribution and application of pipe and boiler coverings, insulation of hot surfaces, ducts, flues, etc., also the covering of cold piping and circular tanks connected with the same and all other work included in the trade jurisdictional claims of the Union.

This to include alterations and repairing of work similar to the above and the use of all materials for the purpose mentioned.

ARTICLE XIV

A cash or surety performance bond shall be posted

by each Person, Firm or Company, who employs Asbestos Workers subject to this Agreement. Said bond shall be in an amount of not less than Five Thousand Dollars (\$5,000.00) guaranteeing the timely payment of wages, traveling and/or board expenses, fringe benefits, and/or other moneys withheld and due employees under the terms of the Agreement. Determination of whether the bond shall be cash or a surety bond shall be made by the officials of the Union.

ARTICLE XV

Safety rules and regulations of any plant or facility where employed shall be complied with at all times. Adequate safety equipment must be furnished by the Employer for Employees protection and used as directed. Questionable safety measures shall be referred to the Joint Trades Board.

Employer shall furnish gloves on foamglass jobs and on jobs where metal lath backed insulation is used; saws on foamglass jobs, and fans or blowers for ventilation in attics or skirts of towers or other locations when needed. Maximum size of buckets on all jobs shall be 12 quarts. Employer shall provide adequate facilities for changing clothes on industrial jobs and facilities for storing tools on all jobs. Employer shall furnish ice water on all jobs.

Adequate scaffolding shall be provided on all jobs. On operations twenty (20) feet or more above the ground level, scaffolding shall consist of not less than two (2) 2" x 10" walk boards tied together side by

each A 2" x 4" or equivalent guard rail shall be provided on each landing.

All tools and equipment furnished by the Employer shall be charged to the Employee when issued to him and full credit will be given the Employee upon return of the tools and equipment.

ARTICLE XVI

The Union shall have a permanent office address with telephone service, where their Business Agent or authorized officer can be communicated with between 8 A. M. and 4:30 P. M. each working day for the purpose of answering inquiries and providing necessary service to the trade.

ARTICLE XVII

The Union agrees there shall be no limitations or restrictions placed upon the individual working efforts of employees.

ARTICLE XVIII

The term of this Agreement shall commence on the 1st day of July, 1962, and shall continue in effect until midnight on the 30th day of June, 1965, and shall renew itself for terms of one (1) year, from year to year thereafter, unless either the Employer or the Union shall give notice in writing to the other not less than ninety (90) days prior to the 30th day of June, 1965, or any annual expiration date thereafter, of its desire to terminate, modify or change this Agreement. If such notice shall have been given, it shall pertain to such Agreement in its entirety.

ARTICLE XIX

This Agreement shall be signed by each Employer and be executed by the President and Secretary or such other officers as are deemed necessary and authorized to do so by Local Union No. 22 of the International Association of Heat and Frost Insulators and Asbestos Workers.

ARTICLE XX .

Any portion of this Agreement found to be in violation of existing federal or state law shall become inoperative and the balance of the Agreement as such continue in full force and effect until date of expiration.

Signed:

HOUSTON INSULATION AND CONTRACTORS ASSOCIATION

Employer

Per J. K. Dixon Per C. E. Foster, Secy.-Treas.

INTERNATIONAL ASSOCIATION OF HEAT AND FROST INSULATORS AND ASBESTOS WORKERS LOCAL UNION NO. 22.

Per R. L. Mooney, Jr. President

Per Brooks Baker Secretary

Witnessed by:

MEMBERS OF HOUSTON INSULATION CONTRACTORS ASSOCIATION AGREEMENTS ORIGINALLY SIGNED BY THE FOLLOWING:

> B & B ENGINEERING AND SUPPLY COMPANY, INC. By Wm. Murfin THE ABER COMPANY By Paul E. Petrofsky ARMSTRONG CONTRACTING AND SUPPLY COMPANY By Claude E. Foster MUNDET CORK CORPORATION . By E. J. Stansbury THE INDUSTRIAL INSULATORS, INC. By George Dabney PRECISION INSULATING COMPANY, INC. By J. K. Dixon, JOHNS-MANVILLE SALES CORP. By R. A. Stapleton

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[fol. 157]

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 21,910

Houston Insulation Contractors Association, Petitioner, versus

NATIONAL LABOR RELATIONS BOARD, Respondent.

ORDER TO FILE PETITION—Filed September 27, 1964

A Petition for Review of an Order of the National Labor Relations Board made on September 4, 1964 in the proceeding known upon the records of the Board as Case No. 23-CC-133 having been presented to the Court;

It Is Ordered that said Petition be filed and docketed as of September 17, 1964; and

It Is Further Ordered that a copy of this order and said Petition be forthwith served on the National Labor Relations Board, and that said Board, upon service of such copies, forthwith certify and files in this Court, a transcript of proceedings, or in lieu thereof, a certified list of all documents, transcripts of testimony, exhibits and other material comprising the record of the proceedings before the National Labor Relations Board in the [fol. 158] above entitled matter within forty (40) days from this date as required by Rule 38, as amended.

Edward W. Wadsworth, Clerk of the United States Court of Appeals for the Fifth Circuit;

Clara R. James, Chief Deputy Clerk for the Court by direction.

[fol. 159]

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

6 No. 21,910

0

Houston Insulation Contractors Association, Petitioner, versus

NATIONAL LABOR RELATIONS BOARD, LOCAL 22, INTERNATIONAL ASSOCIATION OF HEAT AND FROST INSULATORS AND ASSESTOS WORKERS, LOCAL 113, INTERNATIONAL ASSOCIATION OF HEAT AND FROST INSULATORS AND ASSESTOS WORKERS, INTERNATIONAL ASSOCIATION OF HEAT AND FROST INSULATORS, AFL-CIO, Respondents.

Answer of the National Labor Relations Board to Petition for Review and to Set Aside an Order of the Board—Filed October 28, 1964

The National Labor Relations Board, pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C., Secs. 151, et seq., files this Answer to the petition to review and set aside its order issued on September 4, 1964.

- 1. The Board admits the allegations relating to parties contained in that section of the petition for review labeled "The Parties."
- [fol. 160] 2. The Board admits the allegations relating to jurisdiction of this Court contained in the section labeled "Jurisdiction and Venue" of the petition for review.
- 3. With respect to the allegations contained in that section of the petition for review labeled "Statement of Proceedings," the Board prays reference to the certi-

fied transcript of record for a full and exact statement of the pleadings, evidence, findings of fact, conclusions of law and order of the Board, and all other, proceedings had in this matter.

- 4. With respect to the allegations contained in that section of the petition for review labeled "Assignments of Error," the Board denies each and every allegation of error.
- 5. Further answering, the Board avers that the proceedings had before it, the findings of fact, the conclusions of law and order of the Board were and are in all respects proper under the Act.
- 6. Pursuant to Section 10(f) of the Act, the Board is certifying and filing herewith a certified record of all documents, transcripts of testimony, exhibits and other material comprising the entire record of the proceedings before the Board.

Wherefore, the Board prays that this Court cause a copy of this Answer to be served upon petitioner and [fol. 161] that this Court enter a decree denying the petition for review and to set aside the Board's order.

Marcel Mallet-Prevost, Assistant General Counsel, National Labor Relations Board.

Dated at Washington, D. C., October 26, 1964.

[fol.,162]

BEFORE THE NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST LABOR OBGANIZATION OR ITS
AGENTS—August 8, 1963

Instructions: File an ofiginal and 3 copies of this charge and an additional copy for each organization, each local and each individual named in Item 1 with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

Do Not Write In This Space

Case No.

23-CA-133

Dated Filed August 8, 1963

1. Labor Organization Of Its Agents Against Which Charge Is Brought

Name

International Association of Heat and Frost Insulators and Asbestos Workers, AFL-CIO and Local 22 and Local 113 of said International Association.

Address

Int'l: Machinists Bldg. 1300 Connecticut Ave., Washington 6, D. C. Local 22: 4717 Gulf Freeway, Houston, Texas

Local 113: 850 Omaha, Corpus Christi, Texas

[fol. 163] The above-named organization(s) or its agents has (have) engaged in and is (are) engaging in unfair labor practices within the meaning of Section 8(b) subsections(s) (4)(i)(ii)(B) of the National Labor Relations (List subsections)

Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

2. Basis of the charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

Since on or about July 2, 1963, and at all times thereafter, members of the Houston Insulation Contractors Association and their respective employees were induced or encouraged to engage in a refusal in the course of their employment to use, process, transport or otherwise handle or work on any goods, articles, materials or commodities or to perform any services on the products of the Thorpe Products Company and the Techalloy Company by the above-named labor organizations and by their officers, agents and representatives.

Since on or about July 2, 1963, members of the Houston Insulation Contractors Association and their respective employees were threatened, coerced, or restrained from the handling of the materials furnished by the Thorpe Products Company and the Techalloy Company by the above-named labor organizations and their officers, agents and representatives with an object thereof being to force or require the Houston Insulation Contractors Association members and their employees to cease using, handling, transporting or otherwise dealing in the products of the [fol. 164] Thorpe Products Company and the Techalloy Company and to cease doing business with them.

- 3. Name of Employer
 Houston Insulation Contractors Association
- Location of plant involved (Street, City, and State)
 P. O. Box 14009, Houston, Texas
- 5. Type of Establishment (Factory, mine, wholesaler, etc.)
 Association of Contractor Employers
- 6. Identify Principal Product or Service
- 7. No. of Workers Employed
 400

- 8. Full Name of Party Filing Charge Houston Insulation Contractors Association
- 9. Address of Party Filing Charge (Street, City, and State)
 P. O. Box 14009, Houston, Texas
- 10. Tel. No. RI 7-5530 Mr. Foster
- 11. Declaration

[fol. 165] I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

(Signed) WILLIAM DEAKINS
(Signature of representative or person making charge)
William Deakins
Attorney
(Title or office, if any)

August 8, 1963

Wilfully false statements on this charge can be punished by fine and imprisonment (U. S. Code, Title 18, Section 1001) [fol. 166]

BEFORE THE NATIONAL LABOR RELATIONS BOARD

TWENTY-THIRD REGION

In the Matter of

International Association of Heat and Frost Insulators and Asbestos Workers, AFL-CIO; Local 22, International Association of Heat and Frost Insulators and Asbestos Workers, AFL-CIO; Local 113, International Association of Heat and Frost Insulators and Asbestos Workers, AFL-CIO (Armstrong Contracting and Supply Corporation) (Johns-Manville Sales Corporation) (Thorpe Products Company) (Techalloy Company, Incorporated) and Houston Insulation Contractors Association.

COMPLAINT AND NOTICE OF HEARING-September 5, 1963

It having been charged by Houston Insulation Contractors Association herein called Houston Insulation, that International Association of Heat and Frost Insulators and Asbestos Workers, AFL-CIO, herein called the Respondent International; Local 22, International Association of Heat and Frost Insulators and Asbestos Workers, AFL-CIO, herein called Respondent Local 22; and Local 113, International Association of Heat and Frost Insulators and [fol. 167] Asbestos Workers, AFL-CIO, herein called Respondent Local 113: have engaged in, and are engaging in, certain unfair labor practices affecting commerce as set forth in the National Labor Relations Act. as amended. 29 U.S.C. Sec. 151, et seg., herein called the Act, the General Counsel of the National Labor Relations Board, herein called the Board, on behalf of the Board, by the undersigned Regional Director for the Twenty-third region, pursuant to Section 10 (b) of the Act and the Board's Rules and Regulations, Series 8, Section 102.15, hereby issues

this Complaint and Notice of Hearing and alleges as follows:

- 1. The original charge was filed by Houston Insulation on August 8, 1963, and was served on Respondents International, Local 22 and Local 113 by mailing a true copy thereof to them via registered United States mail on August 8, 1963.
- 2. (a) Houston Insulation, a Texas corporation, with its principal office and place of business at Houston, Texas, is an Association of employees engaged in the sale, distribution and installation of insulation products to and for employees engaged in interstate commerce and in the building and construction industry principally at Houston, Galveston, Beaumont, and Port Arthur, Texas, and exists for the purpose, inter alia, of negotiating and administering collective bargaining agreements with Respondent Local 22 made for and on behalf of its Member Employers, who in the course and conduct of their business operations annually sell, distribute and install insulation products to and for employers engaged in interstate commerce and in the building and construction industry in an amount in the aggregate valued at in excess of \$10,000,000.
- [fol. 168] (b) Armstrong Contracting and Supply Corporation, herein called Armstrong, a Member Employer of Houston Insulation, and a subsidiary of Armstrong Cork Company with principal offices at Lancaster, Pennsylvania, is a Delaware corporation, and is engaged at Houston, Texas, in the sale and installation of industrial insulation products, pursuant to contract, in the building and construction industry, from which business it annually sells and ships products outside the State of Texas valued in excess of \$50,000.
 - (c) Johns-Manville Sales Corporation, herein called Johns-Manville, a Member Employer of Houston Insulation, is a Delaware corporation with principal offices in

the State of New York and branch offices in several States including the State of Texas, and is engaged at Houston, Texas, in the manufacture and sale of insulation material, pursuant to contract and distributorship basis, in the building and construction industry, from which business it annually sells and ships products outside the State of Texas, valued at in excess of \$50,000.

- (d) Thorpe Products Company, Division of J. T. Thorpe Company, Inc., herein called Thorpe, is a Texas corporation, and is engaged at Houston, Texas, in the distribution and fabrication of insulation products to and for insulation contractors and industrial employers, engaged in the building and construction industry, from which business it annually sells and ships products outside the State of Texas valued at in excess of \$50,000.
- (e) Techalloy Company, Incorporated, herein called Techalloy, is a Pennsylvania corporation with principal offices in the State of Pennsylvania and branch offices [fol. 169] in the State of Connecticut, New York, Illinois, California, Georgia and Texas, and is engaged at Houston, Texas in conversion (redraw and reroll) of stainless steel and high nickel alloy, and in the sale and distribution of its products to insulation contractors, engaged in the building and construction industry, and to industrial employers, from which business it annually sells and ships products outside the State of Texas valued at in excess of \$50,000.
- 3. (a) In the course of its business, Thorpe, regularly sells mitred fittings to Armstrong, and at all times material herein, Armstrong purchased said mitred fittings for use in the performance of its insulation contract on construction of a new ammonia plant for E. I. DuPont De Nemours and Company at Victoria, Texas.
- (b) At all times material herein, and in the performance of its contract to furnish insulation on an applied basis at the American Oil Company, Barge Pipe Ammonia loading dock at Texas City, Texas, Johns-Manville purchased

pre-cut stainless steel bands to hold insulation on pipe lines from Techalloy.

- 4. (a) The building and construction industry is an "industry affecting commerce" within the meaning of Section 8(b)(4)(i)(ii)(B) of the Act.
- (b) Houston Insulation, Armstrong, Johns-Manville, Thorpe, and Techalloy are, and have been at all times material herein, persons within the meaning of Section 2(1) of the Act, and employers engaged in commerce or in an industry affecting commerce within the meaning of Section 2 (6) and (7) of the Act, respectively.
- [fol. 170] 5. Respondents International, Local 22, and Local 113 are, and have been at all times material herein, labor organizations within the meaning of Section 2 (5) of the Act.
- 6. At all times material herein, the following named persons occupied positions set opposite their respective names, and have been and are now agents of Respondents International, Local 22, and Local 113, acting on behalf of said labor organizations, and are agents within the meaning of Section 2(13) of the Act:

Brooks Baker—Vice President, Respondent International Secretary, Respondent Local 22

Joe Schrode-Business Agent,

Respondent Local 22

- J. R. Eaton—Business Agent, Respondent Local 113
- 7. Respondent Local 22 is the collective bargaining representative of the employees of Armstrong and Johns-Manville.
- 8. Respondents International, Local 22, and Local 113 are not certified as the collective bargaining representative of the employees of Thorpe and Techalloy individually or collectively, under the provisions of Section 9 of the Act, and at no time material herein have said Respondents

been recognized as the collective bargaining agent of the employees of Thorpe and Techalloy, nor have said Respondents made any demands on Thorpe and Techalloy that they be recognized as bargaining agents.

- [fol. 171] 9. At no time material herein has Respondent International, Respondent Local 22 or Respondent Local 113 had any labor dispute with Armstrong or Johns-Manville.
- 10. At all times material herein, Respondents International, Local 22, and Local 113 have been engaged in a boycott of the products manufactured by Thorpe and Techalloy, and sold by them to Armstrong and Johns-Manville, as set forth in paragraph 3 (a) and (b) above, said boycott by Respondents being engaged in by them for the reasons set forth in paragraph 8 above, and the failure of said products to include thereon a label or decal signifying them to be products made by employee members of Respondent Local 22, or by employee members of other local union affiliated with Respondent International.
- 11. Commencing on or about May 28, 1963, and continuing to date, Respondents International, Local 22, and Local 113, by their officers, agents, and representatives, in furtherance of the aforesaid boycott of Thorpe's and Techalloy's products, have induced and encouraged, and are inducing and encouraging, individuals employed by Armstrong and Johns-Manville at the construction sites set out in paragraph 3(a) and (b) above to engage in a strike or refusal in the course of their employment to perform any service for their respective employers, and threatened, coerced and restrained Armstrong, Johns-Manville, and Houston Insulation and its other Member Employees by:
- (a) J. R. Eaton, on or about May 28, 1963, and again on or about the latter part of June or early part of July 1963, the exact date being unknown, directed, instructed, [fol. 172] requested and appealed to the foreman of Arm-

strong, and its employees, at the construction field office and at its project site set out in paragraph 3(a) above, and at the Corpus Christi, Texas, union hall of Respondent Local 113, not to install any mitred fittings on same project since they did not have affixed thereon a union label; not to install any mitred fittings on said construction project unless made or fabricated at the job site; and informed said foreman and employees, "any man caught putting these fittings on would have charges filed against him."

- (b) J. R. Eaton, on or about the latter part of June or early part of July 1963, the exact date being unknown, informed the Houston, Texas, Branch Manager of Armstrong, and the foreman of Armstrong, at the Victoria, Texas, field office of Lummis Company, the general contractor of the construction project set out in paragraph 3(a) above, that Armstrong's employees would not "touch" or install any fittings on said construction project unless said fittings had affixed thereto a union label or decal, and further informed them that reference the insistence of Respondent Local 113 in this matter, "The situation still stands as it is."
- (c) Joe Shrode, on or about July 19, 1963, at a union meeting at the union hall of Respondent Local 22, Houston, Texas, directed, instructed, requested and appealed to the foreman of Johns-Manville, and its employees, at the project site set out in paragraph 3(b) above, to refuse to install any pre-cut stainless steel bands known to Joe Shrode that they were already purchased pre-cut by Johns-Manville, if said pre-cut stainless bands arrived on said construction [fol. 173] project without having affixed thereon a union label or decal.
- (d) Joe Shrode, on or about July 30, 1963, informed the Contract Manager of the Houston, Texas, district of Johns-Manville, at Houston, Texas, that the employees of Johns-Manville, at the construction project set out in paragraph 3(b) above, refused to install on arrival at the said

construction project said pre-cut stainless steel bands on G or about July 23, 1963, by reason that the work of cutting coil stock for the bands into pre-determined lengths was that of Respondent Local 22; that Johns-Manville must not use purchased pre-cut stainless steel bands on its construction projects; and that Johns-Manville could not use on the said construction project, or in any construction project, said pre-cut stainless steel bands since employee-members of Respondent Local 22 would not put union labels on them.

- (e) Brooks Baker and Joe Shrode, on or about June 3, 1963, at a joint meeting in Houston, Texas, of-Respondents International and Local 22 with Houston Insulation and its Member-Employers, and Brooks Baker, on or about July 2, 1963, at a joint meeting in Houston, Texas, of Respondents International and Local 22 with Houston Insulation and its Member-Employers, informed Armstrong, Johns-Manville, and Houston Insulation and its other Member-Employers-B&B Engineering & Supply Company, Inc., The Aber Company, Inc., Mundet Cork Corporation, The Industrial Insulators, Inc., and Precision Insulating Company, Inc.,—that no shop fabricated fittings or other shop fabricated items would be installed by employee-members of Respondents International, Local 22, and Local 113 [fol. 174] or any construction projects engaged in by the aforesaid employers without a union label or decal being affixed to each shop fabricated fitting or other shop fabricated items.
- 12. By the acts and conduct described in paragraph 11 above, and by other acts and conduct, Respondents International, Local 22, and Local 113 have engaged in, and have induced and encouraged individuals employed by Armstrong, Johns-Manville, and by other persons engaged in commerce or in industries affecting commerce, to engage in, strike or refusals in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on goods, articles, materials, or commodities or to perform services, and have threatened, coerced and

restrained Armstrong, Johns-Manville, and other persons engaged in commerce or in industries affecting commerce.

13. An object of the acts and conduct of Respondents International, Local 22, and Local 113 as set forth in paragraphs 11 and 12 above, was and is to force or require Armstrong, Johns-Manville, and other persons engaged in commerce, or in an industry affecting commerce, to cease using, selling, handling, transporting, or otherwise dealing in products of, and to cease doing business with Thorpe and Techalloy.

14: By the acts and conduct engaged in by Respondent International, Local 22, and Local 113 as set forth in paragraph 13 above, Respondents International, Local 22 and Local 113 did engage in, and are engaging in, unfair labor practices within the meaning of Section 8(b)(4)(i) and (ii)(B), and Section 2 (6) and (7) of the Act.

[fol. 175] 15. The acts of Respondents International, Local 22, and Local 113 described in paragraphs 11 and 12 above, occurring in connection with the operations of Houston Insulation, Armstrong, Johns-Manville, Thorpe, and Techalloy described in paragraphs 2, 3 and 4 above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

16. The acts of Respondents International, Local 22, and Local 113 described above constitute unfair labor practices affecting commerce within the meaning of Section (8b)(4) (i) and (ii) (B), and Section 2 (6) and (7) of the Act.

Please Take Notice that on the 10th day of October, 1963, at 10:00 o'clock in the forenoon (C.S.T.), in Room 7620, Federal Office Building, 515 Rusk Avenue, Houston, Texas, a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the allegations set forth in the above Complaint, at which time

and place you will have the right to appear in person, or

otherwise, and give testimony.

You are further notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, Respondents shall file with the undersigned Acting Regional Director, acting in this matter as agent of the National Labor Relations Board, an original and four (4) copies of an Answer to said Complaint within ten (10) days from the service thereof and that unless they do so all of the allegations in the Complaint shall be deemed to be admitted to [fol. 176] be true and may be so found by the Board.

Dated At Houston, Texas this 5th day of September, 1963.

James R. Webster, Acting Regional Director, National Labor Relations Board, Twenty-third Region, 6617 Federal Building, 515 Rusk Avenue, Houston 2, Texas.

BEFORE THE NATIONAL LABOR RELATIONS BOARD

Answer of Respondent International Union

The International Association of Heat and Frost Insulators and Asbestos Workers (hereinafter referred to as "Respondent") hereby files this answer pursuant to Sections 102.20 and 102.21 on the Rules and Regulations of the National Labor Relations Board.

1

Respondent admits the facts alleged in Paragraph 1 of the complaint.

[fol. 177] 2

(a) Respondent admits the facts alleged in Paragraph 2(a) of the complaint.

- (b) Respondent admits the facts alleged in Paragraph 2(b) of the complaint.
- (c) Respondent admits the facts alleged in Paragraph 2(c) of the complaint.
- (d) Respondent admits the facts alleged in Paragraph 2(d) of the complaint.
- (e) Respondent admits the facts alleged in Paragraph 2(e) of the complaint.

3.

- (a) Respondent admits the allegation that Thorpe regularly sells mitred fittings to Armstrong. Respondent is without knowledge or information sufficient to form a belief as to the remaining allegations of Paragraph 3(a) of the complaint.
- (b) Respondent is without knowledge or information sufficient to form a belief as to the allegations of Paragraph 3(b) of the complaint.

4

(a) Paragraph 4(a) of the complaint states a conclusion of law, not material to the issues.

[fol. 178] (b) Respondent admits the facts alleged in Paragraph 4(b) of the complaint.

5.

Respondent admits the facts alleged in Paragraph 5 of the complaint.

6.

Respondent admits the facts alleged in Paragraph 6 of the complaint, insofar as they allege that the named persons are agents and acting on behalf of the organization for whom they occupied positions. Respondent admits the facts alleged in Paragraph 7 of the complaint.

8.

Respondent admits the facts alleged in Paragraph 8 of the complaint and further states that at no time material has Respondent had any labor dispute with Thorpe or Techalloy.

9.

Respondent denies the facts alleged in Paragraph 9 of the complaint.

[fol. 179]

10.

Respondent denies the facts alleged in Paragraph 10 of the complaint.

11.

- (a) Respondent denies each fact alleged in Paragraph 11(a) of the complaint.
- (b) Respondent denies each fact alleged in Paragraph 11(b) of the complaint.
- (c) Respondent denies each fact alleged in Paragraph 11(c) of the complaint.
- (d) Respondent denies each fact alleged in Paragraph 11(d) of the complaint.
- (e) Respondent denies each fact alleged in Paragraph 11(e) of the complaint.

12.

Respondent denies each fact alleged in Paragraph 12 of the complaint.

Respondent denies each fact alleged in Paragraph 13 of the complaint.

14.

Respondent denies each fact alleged in Paragraph 14 of the complaint,

[fol. 180]

15.

Respondent denies each fact alleged in Paragraph 15 of the complaint.

16.

Respondent denies each fact alleged in Paragraph 16 of the complaint.

Sherman, Dunn & Sickles, Joseph A. Sickles, 1200-15th Street, N. W., Washington 5, D. C., Attorney for Respondent International.

Washington, D. C.

Certificate of Service (omitted in printing).

[fol. 181]

BEFORE THE NATIONAL LABOR RELATIONS BOARD

Answer to Complaint

Comes Now Respondents Local 22 and Local 113, International Association of Heat and Frost Insulators and Asbestos Workers, AFL-CIO and in answer to the complaint heretofore filed in the above styled and numbered case, files their answer as follows:

- 1. The allegations in Paragraph 1 are admitted.
- 2. (a) The allegations in Paragraph 2(a) are admitted.
- (b) The allegations contained in Paragraph 2(b) are admitted.

- (c) The allegations contained in Paragraph 2(c) are admitted.
- (d) The allegations contained in Paragraph 2(d) are admitted.
- (e) The allegations contained in Paragraph 2(e) are admitted.
- 3. (a) The allegations contained in Paragraph 3(a) are denied.
- '(b) The allegations contained in Paragraph 3(b) are neither admitted nor denied because Respondents have no information regarding such allegations.
- [fol. 182] 4. (a) The allegations contained in Paragraph 4(a) are admitted.
- (b) The allegations contained in Paragraph 4(b) are admitted.
- 5. The allegations contained in Paragraph 5 are admitted.
- 6. The allegations contained in Paragraph 6 are admitted.
- 7. The allegations contained in Paragraph 7 are admitted.
- 8. The allegations contained in Paragraph 8 are admitted.
- 9. The allegations contained in Paragraph 9 are admitted.
- 10. The allegations contained in Paragraph 10 are denied.
- 11. The allegations contained in Paragraph 11 are denied.
- (a) Respondent Local 113 admits that J. R. Eaton on or about the dates alleged requested and appealed to the foreman of Armstrong and its employees not to install any

mitred fittings on said project which had not been made or fabricated by Armstrong. Other than as admitted above, the remaining allegations of said Paragraph are denied.

- [fol. 183] (b) Respondent Local 113 admits that J. R. Eaton on or about the latter part of June or early part of July, 1963 informed the Houston Texas Branch Manager of Armstrong and the foreman of Armstrong at the Victoria Texas Field Office that Armstrong's employees would not install any mitred fittings on said construction project which had been pre-fabricated by any other company in violation of Armstrong's contract with Respondent Local 22. Other than as admitted above, Respondent denies the allegations contained in Paragraph 11(b).
- (c) Respondent Local 22 admits that Joe Shrode requested and appealed to the foreman of Johns-Manville and its employees to refuse to install any pre-cut steel bands which had been purchased by Johns-Manville from another concern in violation of Johns-Manville's agreement with Respondent Local 22. Other than as admitted above, Respondent denies the allegations contained in Paragraph 11(c).
- (d) Respondent Local 22 admits that Joe Shrode on or about July 30, 1963 informed the contract Manager of Johns-Manville at Houston, Texas of its obligations under the agreement between Respondent Local 22 and Johns-Manville to the effect that Johns-Manville was not to subcontract or sub-let the cutting of stainless steel to any other contractor. Respondent further admits that Joe Shrode stated that Johns-Manville's employees, in an effort to enforce its agreement with Johns-Manville, would not handle any pre-cut stainless steel bands from any other concern. Other than as admitted above, Respondent denies the allegations contained in Paragraph 11(d).
- [fol. 184] (e) Respondent Local 22 admits that Brooks Baker and Joe Shrode on or about June 3, 1963 and on or about July 2, 1963 at a meeting with members of Houston Insulation informed the members thereof that Article VI

of the current agreement states that Respondents were going to seek strict compliance with Article VI of its current agreement to the effect that members of Houston Insulation were not to sub-let or sub-contract any work of the insulators as contained in said agreement. Respondents further admit that on both of the above referred to occasions Brooks Baker and Joe Shrode attempted to discuss methods of identifying shop fabricated fittings or other shop fabricated items in an effort to enforce compliance with the above referred to contractual provision. Other than as admitted above, Respondents deny the allegations contained in Paragraph 11(e).

- 12. The allegations contained in Paragraph 12 are denied.
- 13. The allegations contained in Paragraph 13 are denied.
- 14. The allegations contained in Paragraph 14 are denied.
- 15. The allegations contained in Paragraph 15 are denied.
- 16. The allegations contained in Paragraph 16 are denied.
- [fol. 185] Wherefore, premises considered, Respondents pray that the above complaint be dismissed.

Combs & Mitchell, State National Building, Houston 2, Texas, Attorneys for Respondents, Local 22 and Local 113, International Association of Heat and Frost Insulators and Asbestos Workers, AFL-CIO.

L. J. Mitchell

[fol. 186]

BEFORE THE NATIONAL LABOR RELATIONS BOARD

TXD-43-64 Houston, Texas

TRIAL EXAMINER'S DECISION—February 3, 1964

Arthur Safos, Esq., of Houston, Tex., for the General Counsel.

Vinson, Elkins, Weems & Searls, Esqs. by W. D. Deakins, Jr. Esq., of Houston, Tex., for the Charging Party.

Sherman, Dunn & Sickles, Esqs., by Joseph A. Sickles, Esqs., of Washington, D. C., for the Respondent International.

Combs & Mitchell, Esqs., by Thomas J. Mitchell, Esq., of Houston, Tex., for Locals 22 and 113.

Before: John F. Funke, Trial Examiner.

Statement of the Case

Upon a charge filed August 8, 1963, by Houston Insulation Contractors Association, herein the Contractors Association, against International Association of Heat and Frost Insulators and Asbestos Workers, and Local 22 and Local 113, International Association of Heat and Frost Insulators and Asbestos Workers, AFL-CIO, herein Locals 22 and 113, or collectively as the Respondents, the General Counsel issued complaint alleging Respondents violated Section 8(b)(4)(i) and (ii) (B) of the Act.

The answers of Respondents denied the commission of

unfair labor practices.

[fol. 187] Upon the entire record in this case and from my observation of the witnesses, I make the following:

¹ Unless otherwise noted all dates refer to 1963.

Findings and Conclusions

I. The business of the Companies

Houston Insulation, a Texas corporation, with its principal office and place of business at Houston, Texas, is an Association of employers engaged generally in the sale, distribution and installation of insulation products to and for employers engaged in interstate commerce and in the building and construction industry principally at Houston, Galveston, Beaumont, and Port Arthur, Texas, and exists for the purpose, inter alia, of negotiating and administering collective-bargaining agreements with Respondent Local 22 made for and on behalf of its Member Employers, who in the course and conduct of their business operations annually sell, distribute and install insulation products to and for employers engaged in interstate commerce and in the building and construction in an amount in the aggregate valued at in excess of \$10,000,000.

Armstrong Contracting and Supply Corporation, herein called Armstrong, a Member Employer of Houston Insulation, and a subsidiary of Armstrong Cork Company with principal offices at Lancaster, Pennsylvania, is a Delaware corporation, and is engaged at Houston, Texas, in the sale and installation of industrial insulation products, pursuant to contract, in the building and construction industry, from [fol. 188] which business it annually sells and ships products outside the State of Texas valued at in excess of \$50.000.

Johns-Manville Sales Corporation, herein called Johns-Manville, a Member Employer of Houston Insulation, is a Delaware corporation with principal offices in the State of New York and branch offices in several States including the State of Texas, and is engaged at Houston, Texas, in the manufacture and sale of insulation material, pursuant to contract and distributorship basis, in the building and construction industry, from which business it annually sells

and ships products outside the State of Texas valued at in excess of \$50,000.

Thorpe Products Company, Division of J. T. Thorpe Company, Inc., herein called Thorpe, is a Texas corporation, and is engaged at Houston, Texas, in the distribution and fabrication of insulation products to and for insulation contractors and industrial employers, engaged in the building and construction industry, from which business it annually sells and ships products outside the State of Texas valued in excess of \$50,000.

Techalloy Company, Incorporated, herein called Techalloy, is a Pennsylvania corporation with principal offices in the State of Pennsylvania and branch offices in the State of Connecticut, New York, Illinois, California, Georgia and Texas, and is engaged at Houston, Texas, in conversion (redraw and reroll) of stainless steel and high nickel alloy, and in the sale and distribution of its products to insulation contractors, engaged in the building and construction industry, and to industrial employers, from which [fol. 189] business it annually sells and ships outside the State of Texas at in excess of \$50,000.

The building and construction industry is an "industry affecting commerce" within the meaning of Section 8(b)

(4)(i) and (ii) (B) of the Act.

Houston Insulation, Armstrong, Johns-Manville, Thorpe, and Techalloy are, and have been at all times material herein, persons within the meaning of Section 2(1) of the Act, and employers engaged in commerce or in an industry affecting commerce within the meaning of Section 2(6) and (7) of the Act, respectively.

II. Labor organization involved

Respondents are labor organizations within the meaning of Section 2(5) of the Act.

III. The unfair labor practices

A. The facts

1. Background

Thorpe Products Company, herein Thorpe, at times material herein, sold mitered fittings to Armstrong Contracting and Supply Company, herein Armstrong, which Armstrong used at its insulation construction job at Victoria, Texas. The project was the construction of an ammonia plant for E. I. duPont deNemours & Company.

Techalloy Company, Incorporated, herein Techalloy, at times material herein, sold stainless steel bands to Johns-[fol. 190] Manville Sales Corporation, herein Johns-Manville, for pipe lines it was installing at an American Oil

Company loading wharf at Texas City, Texas.

None of the Respondents is certified or recognized as the collective-bargaining representative of either Thorpe or

Techalloy.

Both Johns-Manville and Armstrong are members of the Contractors Association which had a collective-bargaining agreement with Local 22,2 and both were signatories to the agreement. The contract contained two articles cited by Respondents in support of its position in the case. These read as follows:

ARTICLE VI

The Employer agrees that he will not sublet or contract out any work described in Article XIII and the Union agrees not to contract, subcontract or estimate on work nor allow its membership to do so nor to act in any trade capacity other than that of workman. It is also agreed that no member of a firm or officer of a corporation or their representative or agents shall execute any part of the work

² Marked as Charging Party's Exhibit No. 1, introduced by Respondents.

of application of materials and in no case shall any member of the Union estimate on or give any labor figures.

[fol. 191] ARTICLE XIII

The Agreement covers the rates of pay rules and working conditions of all Mechanics and Improvers engaged in the preparation, distribution and application of pipe and boiler coverings, insulation of hot surfaces, ducts, flues, etc., also the covering of cold piping and circular tanks connected with the same and all other work included in the trade jurisdictional claims of the Union.

This to include alterations and repairing of work similar to the above and the use of all materials for the purpose

mentioned.

2. The refusal at Armstrong

Thorpe manufactured a number of products, among which were mitered fittings, the only product involved in the dispute. Some of these fittings were sold to Armstrong on August 2 and 6. The dispute however, had its genesis earlier.

C. E. Foster, branch manager for Armstrong and president of the Contractors Association, testified that he was in charge of the insulation work under general contractor Lummus Company at Victoria (the duPont project). Lynn Williams was superintendent and Robert Graham was foreman. In the latter part of June or early July Foster received a call from Graham, a member of Local 113, advising him that the members of Local 113 employed by Armstrong refused to supply mitered fittings received at the [fol. 192] jobsite because they did not have labels (decals).

These labels were gummed and could be affixed to insulation products and bore a number which identified the shop in which the product was made. They were distributed to the shops by the respondent locals so that only the products of union shops would bear the label. They were not the same as a union label but one result of their use was union identification.

In the latter part of July a meeting was held at the jobsite attended by a Mr. DeQuir of Lummus, Foster, Williams and James Eaton, business agent of Local 113. Eaton was asked if his men would apply the fittings and Eaton asked, "Is that all we have to discuss, gentlemen?" The meeting then ended. After the meeting Eaton told Foster and Williams he could not permit them to apply the fittings. It does appear, however, from the testimony of Eaton, "infra, that the fittings were later applied when Eaton received a letter from Armstrong' stating that the fittings had been made by Armstrong's Houston shop."

[fol. 193] The mitered fittings manufactured by Thorpe and delivered in early August were not applied by Armstrong's workers until September 16 when a District Court injunction was obtained under the provisions of Section 10(1) of the Act. Lynn Williams testified that he was employed as construction superintendent by Armstrong at Victoria until August 17 when he left for New Orleans. Williams was on vacation when the Thorpe fittings were delivered but he testified that Graham told him that any member of Local 113 who applied the fittings (which bore no label) would be disciplined and that Eaton twice told him that the fittings would not be applied unless they had labels.

^{*} Respondent Local's Exhibit No. 1.

by the fact that a meeting was held on June 3 by the Contractors Association to which Brooks Baker, vice president of the International and Secretary of Local 22, and Joseph Shrode, business agent of Local 22 were invited. At this meeting Baker and Shrode presented the reasons why they wanted the label (identification) and the contractors stated their opposition. After the meeting the Contractors Association sent a letter to Local 22 stating it would not permit labelling in the shops of its members. About July 16 several members of the Association suffered work stoppages because the fittings delivered to jobs did not have the union labels. This stoppage at Armstrong was presumably one of them, for it was the fact that the fittings did not bear the label, not an allegation that they were nonunion products, which caused the refusal. The testimony on this issue is admittedly confusing.

Eaton testified that his attention was first directed to the fact that mitered fittings without labels had been delivered to the Victoria job by members of Local 113. Eaton, who claimed the right under articles VI and XI of his contract (article XI of Local 113's contract was identical with article XIII in Local 22's contract) to insist that the cutting of the fittings be done by employees of Armstrong. When Williams told him that Armstrong's employees had cut the [fol. 194] fittings Eaton asked for proof and, when he received the letter, supra, the fittings were applied.

3. The refusal at Johns-Manville

Edwin E. Roberts, contract manager for Johns-Manville at Houston, testified that over a period of years Techalloy supplied Johns-Manville with Stainless steel bands, stainless steel wire and wire ties, materials used in insulation contracting. In July, Johns-Manville purchased stainless steel bands from Techalloy which had been precut by Techalloy employees for use on an American Oil Company project at Texas City. The bands were delivered to the Johns-Manville Houston warehouse where an employee named Robert Oliver was to apply seals to the bands. Oliver told Roberts he could not apply the seals because Business Agent Shrode of Local 22 told him he (Oliver) could not apply the "union" label since the bands had been cut by employees who were not members of Local 22. The record does not disclose the sequence to this refusal.

Roberts further testified that H. Clifford David was foreman at the American Oil job and that in the latter part of July, David told him that he had been told by Shrode that he (David) could not apply the precut bands because they did not have a union label. Roberts then called Shrode who told him that the bands could not be applied because [fol. 195] they had not been cut by members of the As-

The labels, or decals, were frequently referred to as union labels since the use of the label would serve to indicate the product was fabricated in a union shop.

bestos Workers and that Oliver could not affix the seals for the same reason. (The bands were later affixed by members of the Sheetmetal Workers, following a change in contract specifications.)

H. Clifford David, foreman for Johns-Manville at American Oil, testified that on or about July 19 Shrode told him that he (Shrode) had heard that the bands which were to be used were precut and that if they came in without labels David was to refuse to apply them. On July 23 David went to Texas City to start the American Oil job, found the bands had no labels and went to Roberts and told him he could not use them. David testified that if bands were received with a label he called his business agent and gave him the label number; if bands bore no label he informed him of that.

Brooks Baker, called by Respondent International, testified that his Local (22) and Local 113 had instructed their members not to handle the products of Thorpe and Techalloy because the locals did not have contracts with Thorpe and Techalloy and the use of their products by members of the Contractors Association was in violation of Article VI and XIII of the agreement. Since Johns-Manville and Armstrong were signatories to the contract Baker considered their use of the fitting in the one case and the precut bands in the other to be a violation. In Roker's opinion it would be a violation of the contract whether the fabricator employed union members or not, since this was work (mitering and precutting) customarily performed by Johns-Manville and Armstrong employees. Baker cited an instance where prefabricated fittings were delivered to Industrial Insulators (a signatory to the contract) by a [fol. 196] supplier in Shreveport who had a contract with the Shreveport local and the members employed by Industrial Insulators were instructed not to use them. It was Baker's contention that the issue was not one of a union or nonunion product, but of the right of the employees of the Company which had the contract to perform the mitering and fitting.

Joseph Shrode admitted telling Oliver he could not seal the precut bands because they had not been cut at the Johns-Manville shop and telling David that if the bands arrived at Texas City without a label showing they had been cut by Johns-Manville he was not to apply them. Had the Techalloy bands been cut by Johns-Manville there would have been no objection even though the bands themselves were made in nonunion shop. Like Baker, Shrode contended that it was the loss of work customarily performed at Johns-Manville and not the fact that they were cut by nonunion men which engendered the boycott.

B. Conclusions

There is little dispute on the facts in this case since Baker, Shrode and Eaton all admitted telling members of the respondent locals, employed by Armstrong and Johns-Manville, not to apply mitered fittings and precut bands at the jobsites involved. Plainly this constituted inducement and encouragement of individuals to refuse to handle goods and perform services and restraint and coercion of employers as those terms are used in the Act. Assuming that the objective was to retain for the employees of Arm-[fol. 197] strong and Johns-Manville work on fittings and bands' which, in at least two instances, was performed by Thorpe and Techalloy employees, the issue remains whether the means used to obtain such an objective were unlawful. In so assuming I concede that this was not a boycott of nonunion products and I also concede that the Articles VI and XIII of the agreement with the Contractors Association are lawful.

Having stated the case in a posture most favorable to the Respondents I still find the refusal to handle Thorpe

^{&#}x27;I also, agree, in view of Foster's testimony that the purchase of fittings from Thorpe were merely fill-ins, that the mitering of fittings was customarily performed by Armstrong employees at its Houston shop.

The contract was not attacked by the General Counsel.

and Techalloy products unlawful. Respondents urge that their contract gave them the right to this work, a contention with which I disagree for the exemption to Section 8(e) applies only to work to be done at the jobsite. Thus the House Conferees stated: (Leg. Hist., Vol. 1, p. 943).

It should be particularly noted that the proviso relates only and exclusively to the contracting or subcontracting of work to be done at the construction. The proviso does not exempt from Section 8(e) agreements relating to supplies or other products or materials shipped or otherwise transported to and delivered on the site of the construction.

[fol. 198] The then Senator Kennedy stated: (105 Cong. Rec. 16415, Sept. 3, 1959, Legislative History, Vol. 2, p. 1433).

It should be particularly noted that the proviso relates only to the "contracting or subcontracting of work to be done at the site of the construction." The proviso does not cover boycotts of goods manufactured in an industrial plant for installation at the jobsite, or suppliers who do not work at the jobsite.

Respondents, then, were under a misapprehension if they believed the refusals were justifiable under their construction of their rights to protect their contract. The evidence here is clear that the mitering and cutting, even when performed by Armstrong and Johns-Manville employees, was performed at their shops and not at the jobsite.

Nor would Respondents have been helped if the work had been jobsite construction work for a refusal to handle goods for the purpose of enforcing such an agreement is unlawful under Sand Door. Sand Door was specifically stated in the legislative history to be controlling in construing the

Local 1976, United Brotherhood of Carpenters v. N.L.B.B., 357 U.S. 93.

exemption provise of Section 8(e). (Leg. Hist., Vol. 1, p. 943, supra; Leg. Hist., Vol. II, p. 1433, supra; Leg Hist., Vol. II, p. 1829).¹⁰

[fol. 199] Nor am I impressed by the argument that this contract was, in effect, a contract against subcontracting work usually performed by a bargaining unit. This is not such a contract; this was clearly a contract aimed at the exemption of Section 8(e) and I believe this is admitted by Respondents in their brief. Just as the construction industry differs from production industry, so does the construction subcontracting clause differ from industry's subcontracting clauses and so does the exemption given the construction industry distinguish it from the general protection given industry. The court decision in Retail Clerks Union 770 v. N.L.R.B., 48 LRRM 2598, and the Board's decision on remand, 145 NLRB No. 33, I find inapposite. However, there seems to be no point in belaboring this issue, the statements made in the Congressional debates. Legislative History, supra, indicate beyond argument that the Congress intended to proscribe the refusal to handle goods which took place here.11

I do not find, on the evidence submitted in this case, that Respondent International engaged in any violation or that it participated in the decisions to order the members of Local 22 and Local 113 to refuse to use the fittings and bands. While Baker was a vice president of the International it appears that in this case he was at all times acting in his capacity as secretary to Local 22. The dispute was [fol. 200] a local dispute and I have no evidence that the International directed it or intervened in it.

¹⁰ This view has been adopted by the Board in International Union of Operating Engineers, Local Union 12 (Tri-County Assn. of Civil Engineers and Land Surveyors), 126 NLRB 688, enforced, 293 F. 2d 319.

¹¹ The argument that Armstrong and Johns-Manville were the primary employers does not help Respondents for, as the Supreme Court held in Sand Door, when employees strike or refuse to handle goods for their employer to compel him to cease doing business with a third person the strike or refusal is unlawful.

The Remedy

Having found that the Respondents have engaged in certain unfair labor practices, I shall recommend that it cease and desist therefrom and take certain affirmative action in order to effectuate the policies of the Act.

Since the Board has found violations against another local of the International herein and against the International for conduct similar to that proscribed here and since the Respondents have claimed the right to take action found unlawful herein to protect their contract rights under the collective-bargaining agreement I shall recommend an order designed to prevent the commission of similar and related unfair labor practices which may reasonably be anticipated.

Upon the basis of the foregoing findings and conclusions and upon the entire record in this case, I make the follow-

ing:

Conclusions of Law

1. Armstrong, Johns-Manville, Thorpe and Techalloy are employers engaged in commerce within the meaning of the Act.

Respondents are labor organizations within the meaning of Section 2(5) of the Act.

- [fol. 201] 2. Respondent Local 113 has induced and encouraged individuals employed by Armstrong to refuse to handle or work on materials produced by Thorpe and have coerced and restrained Armstrong with an object of forcing or requiring Armstrong to cease doing business with Thorpe, and has thereby violated Section 8(b)(4)(i) and (ii)(B) of the Act.
- 3. Respondent Local 22 has induced and encouraged individuals employed by Johns-Manville to refuse to handle or work on materials produced by Techalloy with an object of forcing or requiring Johns-Manville to cease doing

business with Techalloy, and has thereby violated Section 8(b)(4)(i) and (ii)(B) of the Act.

- 4. The aforesaid unfair labor practices are unfair labor practices within the meaning of Section 2(6) and (7) of the Act.
- 5. Respondent International has not committed unfair labor practices within the meaning of Section 8(b)(4)(i) and (ii)(B) and Section 2(6) and (7) of the Act.

Recommendations

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in this case it is recommended that Respondent Local 22 and Respondent Local 113, their officers, representatives, agents, successors and assigns, shall:

- 1. Cease and desist from:
- (a) Inducing or encouraging any individual employed by Armstrong, Johns-Manville, or by any other person [fol. 202] engaged in commerce or in an industry affecting commerce, to refuse to install or apply products or material manufactured or fabricated, for use in the insulation industry, by Thorpe, Techalloy, or by any other person.
- (b) Threatening, coercing, or restraining Armstrong, Johns-Manville, or any other person engaged in commerce or in an industry affecting commerce, where an object thereof is to force or require Armstrong, Johns-Manville, or such other persons, not to purchase, or install or apply products or material manufactured or fabricated, for use in the insulation industry, by Thorpe, Techalloy, or by any other person.
- 2. Take the following affirmative action designed to effectuate the policies of the Act:
- (a) Post in conspicuous places in their respective business offices, meeting halls, and other places where they

customarily post notices to members, copies of the notice attached hereto as an Appendix,¹² furnished by the Regional Director for the Twenty-third Region, on first being [fol. 203] signed by the respective authorized representative of Respondents, for a period of 60 consecutive days on receipt thereof.

- (eb) Furnish the Regional Director for the Twenty-third Region copies of said notice signed by the Respondents, as indicated, for posting by Armstrong, Johns-Manville, and the other Member Employers of Houston Insulation, if they should be willing, on their respective jobsites where notices are customarily posted.
- (c) Notify the Regional Director for the Twenty-third Region in writing, within 20 days from the date of service of this Decision, as to the steps taken to comply herewith.¹⁸

Dated at Washington, D. C. February 3, 1964.

John F. Funke, Trial Examiner.

[&]quot;A DECISION AND ORDER" shall be substituted for the words "THE RECOMMENDATIONS OF A TRIAL EXAMINER" in the notice. If the Board's Order is enforced by a decree of the United States Court of Appeals, the notice will be further amended by the substitution of the words "A Decree of the United States Court of Appeals Enforcing an Order" for the words "A Decision and Order."

¹⁸ If these Recommendations are adopted by the Board, this provision shall be modified to read: "Notify the Regional Director for the Twenty-third Region, in writing within 10 days from the date of this Order, what steps the Respondents have taken to comply herewith."

[fol. 204]

APPENDIX A

NOTICE TO ALL MEMBERS PURSUANT TO THE RECOMMENDATIONS OF A TRIAL EXAMINER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL NOT induce or encourage any individual employed by ARMSTRONG CONTRACT AND SUPPLY CORPORATION, JOHNS-MANVILLE SALES CORPORATION, or by any other person engaged in commerce or in an industry affecting commerce, to refuse to install or apply products or material manufactured or fabricated, for use in the insulation industry, by THORPE PRODUCTS COMPANY, TECHALLOY COMPANY, INCORPORATED, or by any other person.

WE WILL NOT threaten, coerce, or restrain ARM-STRONG CONTRACTING AND SUPPLY CORPORATION, JOHNS-MANVILLE SALES CORPORATION, or any other person engaged in commerce or in an industry affecting commerce, where an object thereof is to force or require ARMSTRONG CONTRACTING AND SUPPLY CORPORATION, JOHNS-MANVILLE SALES CORPORATION, or such other persons, not to purchase, install or apply products or materials manufactured or fabricated, for use in the insulation industry, by THORPE PROD-[fol. 205] UCTS COMPANY, TECHALLOY COMPANY, INCORPORATED, or by any other person.

LOCAL 22, INTERNATIONAL ASSOCIATION OF HEAT AND FROST INSULATORS AND ASBESTOS WORKERS, AFL-CIO (Labor Organization)

APPENDIX B

PURSUANT TO THE RECOMMENDATIONS OF A TRIAL EXAMINER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL NOT induce or encourage any individual employed by ARMSTRONG CONTRACTING AND SUPPLY CORPORATION, JOHNS-MANVILLE SALES CORPORATION, or by any other person engaged in commerce or in an industry affecting commerce, to refuse to install or apply products or material manufactured or fabricated, for use in the insulation industry, by THORPE PRODUCTS COM-[fol. 206] PANY, TECHALLOY COMPANY, INCORPORATED, or by any other person.

WE WILL NOT threaten, coerce, or restrain ARM-STRONG CONTRACTING AND SUPPLY CORPORATION, JOHNS-MANVILLE SALES CORPORATION, or any other person engaged in commerce or in an industry affecting commerce, where an object thereof is to force or require ARMSTRONG CON-

TRACTING SUPPLY CORPORATION, JOHNS-MANVILLE SALES CORPORATION, or such other persons, not to purchase, install or apply products or material manufactured or fabricated, for use in the installation industry, by THORPE PRODUCTS COMPANY, TECHALLOY COMPANY, INCORPORATED, or by any other person.

LOCAL 113
INTERNATIONAL
ASSOCIATION OF HEAT AND
FROST INSULATORS AND
ASBESTOS WORKERS, AFLCIO
(Labor Organization)

Dated	 	 	By		~ ~	
,			(Re	presenta	tive)	(Title)

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

Employees may communicate directly with the Board's Regional Office, 6617 Federal Office Building, 515 Rusk [fol. 207] Avenue, Houston, Texas 77002 (Tel. No. Capitol 8-0611, Ext. 271), if they have any question concerning this notice or compliance with its provisions.

BEFORE THE NATIONAL LABOR RELATIONS BOARD

EXCEPTIONS OF HOUSTON INSULATION CONTRACTORS ASSOCIA-TION, CHARGING PARTY, TO TRIAL EXAMINER'S RECOM-MENDED DECISION

Comes now Houston Insulation Contractors Association, the Charging Party herein, hereafter referred to as "the Association", and files these, its Exceptions to the Trial Examiner's Decision and to his rulings on the evidence and formal offers of proof and says: The Association excepts to the findings on page 41, lines 5 through 9, and footnote 8, being a part thereof, of the Trial Examiner's Decision, for the reason that Article VI and XIII of the Agreement are, as a matter of law, unlawful in that they violate the provisions of Section 8(b)(4)(i) and (ii) and Section 8(e) of the National Labor. Relations Act as amended, and such finding is contrary to the only substantial evidence in the case and contrary to law.

[fol. 208] 2

L

The Association excepts to the finding at lines 21 through 27 of page 43 and lines 1-3 of page 44 of the Trial Examiner's Decision for the reason that it is contrary to law and contrary to the only substantial evidence.

3.

The Association excepts to the conclusions as set out at lines 20 through 22 of page 45 of the Trial Examiner's Decision in that the conclusion is contrary to law and contrary to the only substantial evidence of record.

4.

The Association excepts to the recommendations of the Trial Examiner's Decision and to Appendixes "A" and "B" for the reason that they do not apply to the International Association of Heat and Frost Insulators and Asbestos Workers, AFL-CIO, and are, therefore, contrary to the only substantial evidence of record and contrary to law.

5.

The Association excepts to the rulings on the admissibility of evidence by the Trial Examiner at line 2 of page 73 through line 23 of page 75 of the transcript of testimony and upon the refusal of the Trial Examiner to permit the evidence to be shown as presented by the Association in the formal offer of proof at lines 24 of page 75 through

line 17 of page 76 of the transcript of testimony. In support thereof the Association says that such evidence was [fol. 209] erroneously excluded and that it is material to the issues and particularly to the issues set forth in Exceptions 1, 2, 3, and 4 above and that such evidence is substantial and would prove beyond a reasonable doubt that the International Union was guilty of the unfair labor practices as charged in the Complaint and that if the Trial Examiner had received and considered such testimony and formal offer of proof, he would have so found and he, therefore, erred in not considering such testimony and not receiving the testimony so offered.

6.

The Association further excepts to the Decision and says that the Trial Examiner erred in failing to find that the International Union was guilty of the unfair labor practices as charged in the Complaint and in failing to consider General Counsel's Exhibit 2 and the testimony of the witness Claude E. Foster appearing at lines 24 and 25 of page 62; lines 8 and 9 of page 63; lines 21 through 25 of page 63, line 1 through 25 of page 64; lines 1 through 15 of page 65: lines 22 through 25 of page 74: lines 1 through 15 of page 75, together with the formal offer of proof appearing at lines 23 through 25 of page 75 and lines 1 through 13 of page 76 of the transcript of testimony, together with the testimony of the witness Lynn Williams appearing at lines 13 through 16 of page 120 of the transcript of testimony in support thereof, all of which testimony would show beyond a reasonable doubt that the International Union is guilty of the unfair labor practices as charged in the Complaint.

[fol. 210]

7

The Association further excepts to the ruling on the evidence and says that the Trial Examiner erred in rejecting the offer of proof made by Counsel for the General Counsel appearing at lines 19 through 25 of page 203

and lines 1 through 24 of page 204 of the transcript of testimony and the testimony of Mr. Brooks Baker, the International Representative of the Union, given in the United States District Court at Houston, Texas, in a companion case, all of which was offered by the General Counsel in his formal offer of proof as aforesaid, for the purpose of establishing that the International Union is guilty of unfair labor practices as charged and violated the Act as charged and for the purpose of impeaching the witness Brooks Baker, who was the International Representative of the Union.

8.

The Trial Examiner erred in refusing to receive and consider evidence relating to representations made by the Union prior to executing the contract between the Association and the Union as shown at line 7 of page 71 through line 14 of page 73 of the transcript of testimony to show that the Union took an inconsistent position with reference to the meaning and intent of Articles VI and XIII of the contract than it did at the time of the hearing. The matter had been placed in issue by the answer of the Local Unions and the statement of the International Union at lines 1 through 25 of page 14 and lines 1 through 13 of page 15 of the transcript of testimony and the Association was en[fol. 211] titled to be heard upon the matter and when such testimony was offered.

Wherefore, the Association prays that upon consideration of the Exceptions to the Decision of the Trial Examiner and his rulings on the evidence, that the Board will reverse the Decision and find that the International Union is guilty of the violations of the provisions of the Act as charged.

Respectfully submitted,

W. D. Deakins, Jr., Attorney for Houston Insulation Contractors Association.

Of Counsel: Vinson, Elkins, Weems & Searls, 2100 First City National Bank Building, Houston, Texas 77002.

BEFORE THE NATIONAL LABOR RELATIONS BOARD

GENERAL COUNSEL'S CROSS-EXCEPTIONS TO THE TRIAL EXAMINER'S DECISION—March 25, 1964

Comes Now the General Counsel, by the undersigned Counsel for the General Counsel, and hereby files the following cross-examinations to the Trial Examiner's Decision in the above-styled and numbered case.

[fol. 212] The General Counsel excepts to:

- 1. The conclusion that Respondents were not engaged in a boycott of nonunion products. (TXD 41, Lines 5-7)
- 2. The failure to find, on the evidence submitted, that Respondent International engaged in a violation of the Act, or that Respondent International participated in the decisions to order members of Respondent Local 22 and Respondent Local 113 to refuse to apply or install the pre-cut stainless steel bands and the mitered fittings. (TXD 43, Lines 21-25)
- 3. The conclusion, "While Baker was a vice president of the International it appears that in this case he was at all times acting in his capacity as secretary to Local 22." (TXD 43, Lines 25-27; TXD 44, Line 1)
- 4. The conclusion that the dispute was a "local dispute," without any evidence that Respondent International "directed it or intervened in it." (TXD 44, Lines 1-3)
 - 5. The conclusion of law:

"Respondent International has not committed unfair labor practices within the meaning of Section 8(b)(4)(i) and (ii) (B) and Section 2(6) and (7) of the Act." (TXD 45, Lines 20-22)

Upon the foregoing, together with the Brief of Counsel for the General Counsel in support thereof, the Memorandum of the General Counsel to the Trial Examiner submitted in conjunction herewith, and on the record herein [fol. 213] considered as a whole, it is submitted that the foregoing cross-exceptions to the Trial Examiner's Decision should be allowed, findings of fact and conclusions of law made, and an order entered in accordance herewith together with appropriate remedial notices.

Respectfully submitted,

Arthur Safos, Counsel for the General Counsel, National Labor Relations Board.

Dated at Houston, Texas this 25th day of March, 1964.

BEFORE THE NATIONAL LABOR RELATIONS BOARD

D—6370 Houston, Texas

148 NLRB No. 86

DECISION AND ORDER—September 4, 1964

On February 3, 1964, Trial Examiner John F. Funke issued his Decision in the above-entitled proceeding, finding that Respondent Locals 22 and 113 had engaged in and were engaging in certain unfair labor practices and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the Trial Examiner's Decision attached hereto. He also found that Respondent International had not engaged in any unfair labor practices and recommended that the complaint be dismissed as to it. Thereafter, Respondent Locals 22 and 113 and the Association, the Charging Party, filed excepfol. 214] tions to the Trial Examiner's Decision and supporting briefs; cross-exceptions and a supporting brief were filed by the General Counsel; and answering briefs were filed by Respondent International and the Association.

The Board' has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial

¹Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel.

error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions and briefs, and the entire record in the case. The Board adopts the findings of fact made by the Trial Examiner to the extent consistent herewith and concludes that the complaint should be dismissed in its entirety.

We do not agree with the Trial Examiner that Respondent Locals 22 and 113 violated Section 8(b)(4)(i) and (ii) (B) of the Act. While Locals 22 and 113 may have caused a strike among employees of Johns-Manville and Armstrong, respectively, we conclude that such conduct constituted protected primary activity and was not for an object proscribed by the foregoing section of the Act. [fol. 215] Johns-Manville, herein called JM, and Armstrong are engaged in the sale and installation of industrial insulation products. They are members of Houston Insulation Contractors Association, herein called the Association, which has a collective-bargaining contract with Local 22. The contract prohibits JM, Armstrong, and other employer-members from subcontracting certain work performed by their respective employees. This contract also has a provision in which the Employer agrees, when performing work outside Local 22's geographical jurisdiction. to adopt the existing rules and conditions of employment within the jurisdiction of a sister local which have been established by collective-bargaining agreements with insulation companies in that area.* As hereinafter discussed.

² The request of Respondent Locals 22 and 113 for oral argument before the Board is hereby denied, as the record, exceptions, and briefs adequately present the issues and positions of the parties.

³ Article I of Local 22's contract provides:

The Employer further agrees that on all operations outside the chartered territory of the Union he will abide by the rates of pay, rules and working conditions established by collectivebargaining agreement between the Local insulation contractors and the local union in that territory. . . .

the work stoppage involving Armstrong's employees occurred in Victoria, Texas, within the jurisdiction of Local 113. Local 113's contract with employers in its jurisdiction contains an absolute ban against subcontracting similar to one contained in Local 22's contract.

Techalloy Company, Incorporated, herein called Techalloy, sells metal fastening products to JM and other insulation contractors. Some of the products are coils or rolls of stainless steel from which bands or strips may be cut and then used to fasten asbestos material around pipes which [fol. 216] are to be insulated. In one instance, Techalloy sold precut steel bands to JM which the latter purchased for use on an American Oil Co. project located at Texas City, Texas; which is within the geographical jurisdiction of Local 22. Generally, JM only purchases rolls or coils of steel from Techalloy and JM's employees then cut strips or bands from the roll. Techalloy's employees are not represented by any union.

Thorpe Products Company, herein called Thorpe, sells asbestos products to Armstrong and other insulation contractors. Some of these products are straight lengths of asbestos which may be cut to size and then used to cover pipes which are to be insulated. On one occasion, Thorpe sold mitered asbestos fittings to Armstrong which the latter purchased for use on a Dupont project located in Victoria, Texas, which is within the jurisdiction of Local 113. Generally, Armstrong only purchases straight length of asbestos from Thorpe, and Armstrong's employees then miter or cut the asbestos at angles with a saw and glue these cut sections together so that the material can be used to cover curved or "L" shaped pipes. This proceessing results in a mitered fitting. Thorpe's employees are non-union.

^{*}Premolded fittings, which are not involved in the instant case, but are hereinafter discussed in connection with other cases decided by the Board, are factory or machine manufactured with the use of heat and forms to produce "L" shaped insulation coverings. Neither Techalloy nor Thorpe manufacture premolded fittings.

[fol. 217] The General Counsel contends that Local 22 had a primary dispute with Techalloy because the latter employed nonunion employees and, in furtherance of that dispute, struck neutral employer JM to force it to cease doing business with Techalloy. With respect to Local 113's conduct, the General Counsel's position is the same; that Thorpe was the primary employer whose nonunion products were sold to neutral employer Armstrong. The Unions maintain that they were engaging in primary conduct against JM and Armstrong (Local 22 against JM and Local 113 against Armstrong), in protest of the subcontracting of work customarily performed by JM and Armstrong employees. The evidence relating to the work stoppages which we deem critical is summarized below.

The JM dispute: JM had always purchased coils or rolls of steel from Techalloy which JM's employees would cut into bands or strips to be used in applying insulation materials. This preparatory work was reserved for JM employees, and they could not be deprived of it by subcontracting, under Local 22's contract with JM. In July 1963, however, JM, for the first time purchased precut bands from Techalloy for use at the Texas City project. As the preparation work usually performed by JM employees was thus denied them, JM employees refused to apply these precut bands. JM's use of Techalloy products had never before been protested by Local 22.

The Armstrong dispute: Armstrong had always purchased straight lengths of asbestos materials from Thorpe which Armstrong's employees would cut to make mitered fittings which were then applied at the jobsite. The preparation work of making mitered fittings was reserved for [fol. 218] Armstrong employees under that employer's collective-bargaining contract with Local 22, and could not be subcontracted under Local 113's contract with employers in its geographical jurisdiction, which included Victoria, Texas, where the Armstrong dispute arose. As noted, Armstrong had in substance agreed to abide by Local 113's contractual ban against subcontracting.

In June or July 1963, a supply of mitered fittings were brought to the Victoria project which Armstrong's employees, who were members of Local 113, refused to apply until advised by Armstrong that its own employees in Houston, within Local 22's jurisdiction, had performed the preparation work. In August 1963, Armstrong's employees again refused to apply precut or mitered fittings at Victoria. These particular fittings had been purchased for the first time by Armstrong from Thorpe. Local 113 had never before protested the use of Thorpe products.

Upon the entire record, we cannot agree with the General Counsel that the Respondent Locals were engaged in a boycott of nonunion products in violation of the Act. While Techalloy and Thorpe were nonunion employers, neither Local 22 nor Local 113 had ever refused to apply their products before the incidents in question. On these occasions, the purchases made from them clearly deprived the JM and Armstrong employees of preparation work to which they were entitled. The conduct complained of herein [fol. 219] was taken to protest such a deprivation of work, its object being to protect or preserve for employees certain work customarily performed by them. This conduct constituted primary activity and is protected by the Act, as was the earlier action taken at the Victoria project to

⁵ In his disposition of the case, which we do not adopt, the Trial Examiner assumed that there was no such boycott.

In International Association of Heat and Frost Insulators (Insul-Coustic Corporation), et al., 139 NLRB 659. International Association of Heat and Frost Insulators (Speed-Line Manufacturing Company, Inc.), et al., 139 NLRB 688, upon which the General Counsel relies, the present situation did not obtain. In those cases, the premolded fittings boycotted by the unions had never been processed or prepared by the employees there involved.

Although there is evidence that employees of JM refused to apply the precut steel bands and that employees of Armstrong refused to apply the mitered fittings because these products did not bear a union decal, the record shows that these decals were used to assist the unions to police the no-subcontracting contractual provisions.

protest the use of mitered fittings which, it was thought, [fol. 220] had been prepared by other than Armstrong's employees.

[fol. 221] In view of our conclusion that Respondent Locals 22 and 113 did not violate the Act, the complaint must also be dismissed as to Respondent International. Accordingly, we shall dismiss the complaint in its entirety.

In his separate opinion, Member Leedom disagrees with our finding that Local 113's conduct was lawful. He asserts that Local 113 had no collective-bargaining contract with Armstrong, and that the mitering which it was seeking to preserve would not in any event have been performed by employees whom it represented. But Armstrong had agreed with Local 22 that, when it performed work outside the territorial jurisdiction of Local 22, it would abide by terms and conditions of employment established in that area by contract between the local insulation contractors and the local union. Local 113's contract with insulation contractors contained the identical no-subcontracting clause present in Local 22's contract. It appears to be conceded that the clause was lawful.

Whether Local 113 is regarded as a third-party beneficiary of Local 22's bargaining contract or as agent of Local 22, it had the right to insist, in accordance with the terms of the contract, that Armstrong adhere to the lawful no-subcontracting clause. Painters District Council No. 1 (Central States Painting and Decorating Company), 147 NLRB No. 12 (Members Leedom and Jenkins dissenting). On two occasions, Local 113 members who were employees of Armstrong refused to apply the mitered fittings. The first time, in June or July 1963, the employees voluntarily did apply them when informed that Armstrong employees at Houston had done the preparatory work. This incident has no significance because Armstrong had not subcontracted out the mitering and, therefore, had not violated the no-subcontracting clause. On the second occasion, in August 1963, Armstrong purchased the mitered fittings from Thorpe. Armstrong's employees refused to apply them at the direction of Local 113 because the work of mitering had been subcontracted out to another employer - Thorpe. Armstrong had thus violated the no-subcontracting clause of its contract and Local 113's conduct was therefore lawful. See Milk Wagon Drivers and Dairy Employees Union, Local 603 (Drive-Thru Dairy, Inc.), 145 NLRB No. 42; Ohio Valley District Council, United Brotherhood of Carpenters (Cardinal Industries, Inc.), 136 NLRB 977, 985-986.

ORDER

It Is Hereby Ordered that the complaint issued in this case be, and it hereby is, dismissed in its entirety.

Dated, Washington, D. C. September 4, 1964.

Frank W. McCulloch, Chairman, Gerald A. Brown, Member, National Labor Relations Board.

MEMBER LEEDOM, concurring and dissenting:

I agree with my colleagues' dismissal of the complaint as to Respondents International and Local 22, but not with their dismissal as to Respondent Local 113. As to Local 22, the record in my opinion fails to establish that this Respondent's conduct was directed at anything other than the enforcement of a lawful work-preservation clause in the agreement between it and Johns-Manville as an As-[fol. 223] sociation member. Local 113's conduct, however, stands on a different footing.

Local 113 had no contract with Armstrong. It was neither a third-party beneficiary of Local 22's bargaining contract with Armstrong, nor is there anything to show that it was acting as an agent of Local 22 for the purpose of enforcing Local 22's contract with Armstrong. Nor can I agree with my colleagues' apparent position that Armstrong's contract with Local 22, through the Houston Association, would permit Local 113 to enforce against Armstrong the work-preservation clause in its agreement with a different employer association of which Armstrong was not a member.

⁸ As the alleged violation by the International necessarily hinges, in my opinion, on the alleged violation by Local 22, I concur in the dismissal as to the International but not in the Trial Examiner's stated reason for not imputing Baker's conduct to the International. Cf. Catalina Island Sightseeing Lines, 124 NLRB 813, at 816.

^o See the dissenting opinion in Central States Painting and Decorating Company, 147 NLRB No. 12.

Further, it is clear from the record that the mitering work which Local 113 was seeking to "preserve" would not in any event have been performed by employees which it represented, but would, if performed by Armstrong, have been performed by employees in another unit represented by Local 22; hence my colleagues are exculpating Local 113 for assertedly seeking to enforce an agreement to which it was not a party for the benefit of employees it did not represent.¹⁰

[fol. 224] In view of the absence of any valid contractual support for Local 113's asserted claim, and the further fact of Local 113's earlier willingness to permit employees represented by Local 22 to perform the very work which it refused to permit the unrepresented Thorpe employees to perform, I can only conclude that the record with respect to Local 113, unlike the record with respect to Local 22, establishes that this Respondent's objection to premitered fittings was based on the non-union status of the employees who had performed the work, and not on their non-unit status. As a refusal to install products for such unionrelated reasons is proscribed by Section 8(b)(4)(i) and (ii)(B), and as Local 113 is clearly responsible for such refusal, I would find that Respondent Local 113 violated the Act as alleged.11 As my colleagues are unjustifiably dismissing the complaint as to this Respondent, I must to that extent dissent.

Dated, Washington, D. C. September 4, 1964,

Boyd Leedom, Member, National Labor Relations Board.

¹⁰ See R. O. Lewis, et al. (National Bituminous Coal Wage Agreement), 148 NLRB No. 31, in which the Board has only recently held a work protection clause invalid under Section 8(e) "where, as here, the work protection sought extends beyond the established unit."

¹¹ See R. O. Lewis, et al., supra.

[fol. 225] [File endorsement omitted]

[fol. 226] · A

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 21910

Houston Insulation Contractors Association, Petitioner, vs.

NATIONAL LABOR RELATIONS BOARD,

and

Local 22, International Association of Heat and Frost Insulators and Assestos Workers,

and .

LOCAL 113, INTERNATIONAL ASSOCIATION OF HEAT AND FROST INSULATORS AND ASBESTOS WORKERS,

and

INTERNATIONAL ASSOCIATION OF HEAT AND FROST INSULATORS, AFL-CIO, Respondents.

PETITION FOR REVIEW AND TO SET ASIDE A DECISION AND ORDER OF THE NATIONAL LABOR RELATIONS BOARD AND APPENDIX—Filed September 17, 1964

To the United States Court of Appeals for the Firth Circuit and the Honorable Judges Thereof:

Comes now Houston Insulation Contractors Association, hereinafter called "Petitioner," and files this Petition for [fol. 227] Review and to Set Aside the Decision and Order of the National Labor Relations Board, hereinafter called the "Board," issued September 4, 1964, by which Petitioner is aggrieved as hereinafter set forth.

^{1 148} NLRB No. 86.

The Parties

Petitioner is an unincorporated association of contractors who engage in the business of the sale and application of thermal insulation materials to commercial owners and in industry in Houston and Victoria and at other localities within the State of Texas, with its principal place of business at 11th and Maxroy Streets, Houston, Texas.

Respondent is a public body designated and known as the National Labor Relations Board provided for by the provisions of the Labor Management Relations Act (29 USC §153), composed of the following members: Frank W. McCulloch, Gerald A. Brown, Boyd Leedom, Howard Jenkins, Jr., and John H. Fanning. Respondent maintains its principal office at 1717 Pennsylvania Avenue, N.W., [fol. 228] Washington 25, D. C.; International Association of Heat and Frost Insulators, AFL-CIO, is a union located at 1300 Connecticut Avenue, Washington 6, D. C.; Local 22 is located at 4717 Gulf Freeway, Houston, Texas; and Local 113 is located at 350 Omaha, Corpus Christi, Texas

Jurisdiction and Venue

This Court has jurisdiction of this Petition for Review under the provisions of Section 10(f) of the Labor Management Relations Act, as amended, 29 USC §160(f).

Petitioner is located and has its principal place of business within the Fifth Judicial Circuit of the United States and within the jurisdiction of this Honorable Court.

Petitioner is a party to the proceedings herein complained of and was the charging party, having filed the charges out of which the Complaint issued herein and out of which the Decision and Order complained about was issued by the Respondent, and Petitioner is aggrieved by such Decision and Order, as will be more fully set forth hereafter.

Statement of the Proceedings

By the Decision and Order issued September 4, 1964, Respondent found that Local 22, International Association of Heat and Frost Insulators and Asbestos Workers, hereinafter called "Local 22"; Local 113, International [fol. 229] Association of Heat and Frost Insulators and Asbestos Workers, hereinafter called "Local 113"; and the International Association of Heat and Frost Insulators, AFL-CIO, hereinafter called the "International," were not in violation of the provisions of Section 8(b)(4)(i) and (ii)(B) of the Act² and dismissed the Complaint in its entirety.

The Decision and Order were issued following proceedings instituted by a charge filed by Petitioner on August 8, 1963, alleging that Locals 22 and 113 and the International had violated the provisions of Section 8(b)(4)(i) and (ii)(B) of the Act in refusing to handle the products of Thorpe Products Company and Techalloy Company, Incorporated, who had sold products of their manufacture to Johns-Manville Sales Corporation and Armstrong Contracting and Supply Corporation, respectively, for application on contracts being performed by Johns-Manville at Texas City, Texas, and Armstrong at Victoria, Texas.

[fol. 230] After investigation of such charges, the General Counsel issued a Complaint on September 5, 1963, charging violation of the provisions of Section 8(b)(4)(i) and (ii)(B) of the National Labor Relations Act, as amended, by Locals 22 and 113 and the International.

An injunction was secured by the General Counsel on September 13, 1963, before the Hon. Joe Ingraham, in the United States District Court at Houston, Texas, restraining Locals 22 and 113, the International, their officers, representatives, agents, servants, employees, attorneys, and all members and persons acting in concert or participation with them from conducting secondary boycotts and from violation of the provisions of Section 8(b)(4)(i) and

^{2 29} USC §158.

(ii) (B) of the Act. A copy of such injunction is a part of

the Appendix hereof.

After a hearing was held, Trial Examiner John F. Funke issued his Decision finding Locals 22 and 113 had engaged in and were engaging in unfair labor practices as charged and recommended that they cease and desist therefrom. The Trial Examiner found that the International had not engaged in unfair labor practices and recommended that the Complaint be dismissed as to it.

[fol. 231] Thereafter, Locals 22 and 113 and the Petitioner here filed exceptions to the Trial Examiner's Decision and the General Counsel filed cross exceptions to

the exceptions filed by Locals 22 and 113.

The Respondent, sitting by a three-member panel, issued its Decision and Order complained of here, adopting the findings of fact made by the Trial Examiner " * * * to the extent consistent (therewith) and (concluded) that the complaint should be dismissed in its entirety." The Respondent also " * * reviewed the rulings of the Trial Examiner made at the hearing and (found) that no prejudicial error was committed."

Petitioner is aggrieved by Respondent's Decision and Order issued September 4, 1964, and errors of the Trial Examiner as pointed out by Exceptions duly filed with the Respondent to the Trial Examiner's Decision. Copies of the Decision and Order of the Board and the Trial Examiner's Decision are set out in full in the Appendix hereof.

Assignments of Error

Petitioner relies upon the following assignments of error in the Decision and Order of September 4, 1964, and errors [fol. 232] of the Trial Examiner duly urged before the Respondent in Exceptions filed to the Trial Examiner's Decision for reversal of the Decision and Order of the Respondent:

(1) Respondent erred in finding that Locals 22 and 113 had not violated Section 8(b)(4)(i) and (ii)(B) of the Act.

- (2) Respondent erred in finding that the strike or refusal to handle the products of Techalloy Company, Incorporated, and Thorpe Products Company were protected primary activity against Johns-Manville Sales Corporation and Armstrong Contracting and Supply Corporation.
- (3) Respondent erred in failing to find that the refusal to handle the products of Techalloy Company, Incorporated, and Thorpe Products Company was for an unlawful object of boycotting non-union goods and thus violated Section 8(b)(4)(i) and (ii)(B) of the Act.
- (4) Respondent erred in failing to reverse the Decision of the Trial Examiner insofar as he found that the [fol. 233] International had not violated the provisions of the Act and in failing to find that the International Association of Heat and Frost Insulators violated the provisions of Section 8(b)(4)(i) and (ii)(B) of the Act as the moving force which directed the unlawful activities of Locals 22 and 113.
- (5) Respondent erred in failing to reverse the ruling of the Trial Examiner who refused to receive evidence that Locals 22 and 113 and the International were guilty of a preconceived unlawful course of conduct and conspiracy to violate the provisions of Section 8(b)(4)(i) and (ii)(B) of the Act.
- (6) Respondent erred in failing to reverse the ruling of the Trial Examiner excluding evidence which would have shown that the contract between the parties was stipulated and agreed to cover only work to be performed at the job site and to prevent the contractors from contracting such work to non-union contractors.
- (7) Respondent erred in reversing the Trial Examiner's finding as to the refusal of Locals 22 and 113 to handle the products of Techalloy Company, Incorporated, [fol. 234] and Thorpe Products Company and holding

that such refusal to handle was a protestation for the deprivation by Johns-Manville Sales Corporation and Armstrong. Contracting and Supply Corporation of work customarily performed by members of Locals 22 and 113 in that such finding is:

- (a) Contradictory of Respondent's findings that the products of Techalloy Company, Incorporated, and Thorpe Products Company had been handled in the past by members of Locals 22 and 113 without protest, and
- (b) Contrary to the substantial evidence which showed the object of the unlawful acts of the members of Locals 22 and 113 were to boycott the goods and products of non-union contractors.
- (8) The Respondent erred in failing to find that the provisions of Section 8(e) of the Act limits the applicability of the agreement not to subcontract work to be performed at the job site and not to work performed by Techalloy Company, Incorporated, and Thorpe Products Company which was performed off the job site.
- [fol. 235] (9) The Respondent erred in making findings not based on substantial evidence.
- (10) Alternatively, Respondent erred in failing to find that picketing to enforce the provisions of the contract between the Houston Insulation Contractors Association and Locals 22 and 113 was proscribed by the Act.
- (11) Respondent erred in finding that in June or July, 1963, the employees of Armstrong Contracting and Supply Corporation voluntarily applied mitred fittings when informed that employees of Armstrong at Houston had done the preparatory work, as contrary to the evidence.

- (12) Respondent erred in finding that the purchase of materials from Thorpe Products Company and Techalloy Company, Incorporated, by Johns-Manville Sales Corporation and Armstrong Contracting and Supply Corporation deprived the members of Locals 22 and 113 of preparation of work to which they are entitled, contrary to the only substantial evidence.
- (13) Respondent erred in finding that under the contracts between the Houston Insulation Contractors Association and Locals 22 and 113, the work in dispute could [fol. 236] not be contracted and was preserved for such employees, contrary to the substantial evidence.

Prayer

Wherefore, Petitioner respectfully prays:

- (1) That a copy of this Petition be forthwith transmitted by the Clerk to the National Labor Relations Board at 1717 Pennsylvania Avenue, N.W., Washington, D. C.
 - (2) That this Court, upon review of this case, vacate and set aside Respondent's Decision and Order issued September 4, 1964.
 - (3) That this Court order and direct Respondent enter an order that Locals 22 and 113 and the International Association of Heat and Frost Insulators and Asbestos Workers, AFL-CIO, their officers, representatives, agents, successors and assigns shall cease and desist from:
 - (a) Inducing or encouraging any individual employed by Johns-Manville Sales Corporation and Armstrong Contracting and Supply Corporation or by any other person engaged in commerce or in an industry affecting commerce, where the object thereof is inforce or require Johns-Manville Sales Corporation or [fol. 237] Armstrong Contracting and Supply Corporation, or such other persons, not to purchase, or install or apply any products or material manufactured or

fabricated, for use in the insulation industry by Thorpe Products Company or Techalloy Company, Incorporated, or by any other person.

- (b) Threatening, coercing or restraining Armstrong Contracting and Supply Corporation or Johns-Manville Sales Corporation, or any other person engaged in commerce or in an industry affecting commerce, where an object thereof is to force or require Armstrong Contracting and Supply Corporation or Johns-Manville Sales Corporation, or such other persons, not to purchase, or install or apply products or material manufactured or fabricated, for use in the insulation industry, by Thorpe Products Company or Techalloy Company, Incorporated, or by any other person.
- (c) Alternatively, and if this Honorable Court does not issue the Order prayed for above, to order the Respondent to re-open the proceedings for the purpose [fol. 238] of receiving the evidence rejected by the Trial Examiner as set out in Assignments of Error (5) and (6) above.

Respectfully Submitted,

W. D. Deakins, Jr., Attorney for the Houston Insulation Contractors Association.

Of Counsel: Vinson, Elkins, Weems & Searls, 2100 First City National Bank Bldg., Houston, Texas 77002.

September 14, 1964.

[fol. 239] Certificate of Service (omitted in printing).

APPENDIX TO PETITION

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION
Civil No. 63-H-452

CLIFFORD W. POTTER, Regional Director of the Twenty-third Region of the National Labor Relations Board, for and on behalf of the National Labor Relations Board, Petitioner,

International Association of Heat and Frost Insulators and Assestos Workers, AFL-CIO,

and

LOCAL 22, International Association of Heat and Frost Insulators and Assestos Workers, AFL-CIO,

and

LOCAL 113, INTERNATIONAL ASSOCIATION OF HEAT AND FROST INSULATORS AND ASBESTOS WORKERS, AFL-CIO, Respondents.

FINDINGS OF FACT AND CONCLUSIONS OF LAW— September 13, 1963

This cause came on to be heard upon the verified petition of Clifford W. Potter, Regional Director of the Twenty-third Region of the National Labor Relations Board (herein called the Board), for a temporary injunction pursuant to [fol. 242] Section 10 (1) of the National Labor Relations Act, as amended (herein called the Act), pending the final disposition of the matters involved herein pending before the Board, and upon the issuance of an order to show

cause why injunctive relief should not be granted as prayed in said petition. Respondents filed an answer to said petition. A hearing on the issues raised by the petition and answer was duly held on September 6 and 12, 1963. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, to present evidence bearing on the issue, and to argue on the evidence and the law. The Court has fully considered the petition, answers, evidence, arguments, and briefs of counsel. Upon the entire record, the Court makes the following:

Findings of Fact

- 1. Petitioner is Regional Director of the Twenty-third Region of the Board, an agency of the United States, and filed the petition herein for and on behalf of the Board.
- 2. On or about August 8, 1963, Houston Insulation Contractors Association (herein called Houston Insulation), pursuant to provisions of the Act, filed a charge with the Board alleging, inter alia, that international Association [fol. 243] of Heat and Frost Insulators and Asbestos Workers, AFL-CIO; Local 22, International Association of Heat and Frost Insulators and Asbestos Workers, AFL-CIO; and Local 113, International Association of Heat and Frost Insulators and Asbestos Workers, AFL-CIO (herein called Respondents), labor organizations, have engaged in, and are engaging in, unfair labor practices within the meaning of Section 8(b)(4)(i) and (ii), subparagraph (B), of the Act.
- 3. The aforesaid charge was referred to petitioner as Regional Director of the Twenty-third Region of the Board.
- 4. There is, and petitioner has, reasonable cause to believe that:
- (a) Respondents, unincorporated associations, are organizations in which employees participate and which exists for the purpose, in whole or in part, of dealing with em-

ployers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

- (b) Respondents International, Local 22 and Local 113 maintain their principal offices at Washington, D. C., Houston, Texas and Corpus Christi, Texas, respectively, and at all times material herein all of Respondents have been engaged within this judicial district in transacting busi[fol. 244] ness and in promoting and protecting the interests of their respective employee members and the employee members of constituent and affiliated labor organizations.
- (c) Houston Insulation, a Texas corporation, with its principal office and place of business at Houston, Texas, is an Association of employers engaged generally in the sale, distribution and installation of insulation products to and for employers engaged in interstate commerce and in the building and construction industry principally at Houston, Galveston, Beaumont, and Port Arthur, Texas, and exists for the purpose, inter alia, of negotiating and administering collective bargaining agreements with Respondent Local 22 made for and on behalf of its Member Employers, who in the course and conduct of their business operations annually sell, distribute and install insulation products to and for employers engaged in interstate commerce and in the building and construction industry in an amount in the aggregate valued at in excess of \$10,000,000.
- (d) Armstrong Contracting and Supply Corporation (herein called Armstrong), a Member Employer of Houston Insulation, and a subsidiary of Armstrong Cork Company with principal offices at Lancaster, Pennsylvania, is a Dela-[fol. 245] ware corporation, and is engaged at Houston, Texas, in the sale and installation of industrial insulation products, pursuant to contract, in the building and construction industry, from which business it annually sells and ships products outside the State of Texas valued at in excess of \$50,000.

- (e) Johns-Manville Sales Corporation (herein called Johns-Manville), a Member Employer of Houston Insulation, is a Delaware corporation with principal offices in the State of New York and branch offices in several States including the State of Texas, and is engaged at Houston, Texas, in the manufacture and sale of insulation material, pursuant to contract and distributorship basis, from which business it annually sells and ships products outside the State of Texas valued at in excess of \$50,000.
- (f) Thorpe Products Company, Division of J. T. Thorpe Company, Inc. (herein called Thorpe), is a Texas corporation, and is engaged at Houston, Texas, in the distribution and fabrication of insulation products to and for insulation contractors and industrial employers, engaged in the building and construction industry, from which business it annually sells and ships products outside the State of Texas valued at in excess of \$50,000.
- [fol. 246] (g) Techalloy Company, Incorporated (herein called Techalloy), is a Pennsylvania corporation with principal offices in the State of Pennsylvania and branch offices in the States of Connecticut, New York, Illinois, California, Georgia and Texas, and is engaged at Houston, Texas in conversion (redraw and reroll) of stainless steel and high nickel alloy, and in the sale and distribution of its products to insulation contractors, engaged in the building and construction industry, and to industrial employers, from which business it annually sells and ships products outside the State of Texas valued at in excess of \$50,000.
- (h) In the course of its business, Thorpe regularly sells mitred fittings to Armstrong, and at all times material herein, Armstrong purchased said mitred fittings in the performance of its insulation contract on construction of a new ammonia plant for E. I. duPont De Nemours and Company at Victoria, Texas.
- (i) At all times material herein, and in the performance of its contract to furnish insulation on an applied basis

at the American Oil Company, Barge Pipe Ammonia loading dock at Texas City, Texas, Johns-Manville purchased pre-cut stainless steel bands to hold insulation on pipe [fol. 247] lines from Techalloy.

- (j) Respondent Local 22 is the collective bargaining representative of the employees of Armstrong and Johns-Manville.
- (k) Respondents are not certified as the collective bargaining representative of the employees of Thorpe and Techalloy under the provisions of Section 9 of the Act, and at no time material herein have Respondents been recognized as the collective bargaining agent of the employees of Thorpe and Techalloy, for have Respondents made any demands on Thorpe and Techalloy that they be recognized as bargaining agent.
- (l) At no time material herein has Respondent International, Respondent Local 22 or Respondent Local 113 had any labor dispute with Armstrong or Johns-Manville.
- (m) At all times material herein, Respondents have been engaged in a boycott of the products manufactured by Thorpe and Techalloy, and sold by them to Armstrong and Johns-Manville, as set forth in Findings of Fact 4(h) and (i) above, said boycott by Respondents being engaged in by them for the reasons set forth in Findings of Fact 4(k) above, and the failure of said products to include thereon [fol. 248] a label or "decal" signifying them to be products made by employee members of Respondent Local 22, or by employee members of other local unions affiliated with Respondent International.
- (n) In furtherance of the aforesaid boycott of products manufactured by Thorpe and sold to Armstrong for use on its insulation contract at Victoria, Texas, as set forth in Findings of Fact 4(m) above, Respondent International and Respondent Local 113, on or about May 28, 1963, instructed, requested, and appealed to individuals employed

by Armstrong at Victoria, Texas, not to handle or install Thorpe's product.

- (o) In furtherance of the aforesaid boycott of Techalloy's product sold to Johns-Manville for use at the Texas City, Texas, construction project, as set forth in Findings of Fact 4(m) above, Respondent International and Respondent Local 22, on or about July 19, 1963, instructed, requested, and appealed to individuals employed by Johns-Manville at Texas City, Texas, not to handle or install Techalloy's product, and on or about July 30, 1963, told Johns-Manville that its members would not be allowed to handle or install said product, and that Johns-Manville could not use said product on any job since Respondents would not put "union labels" on said product.
- [fol. 249] (p) In furtherance of the aforesaid boycott of Thorpe's and Techalloy's products, as set forth in Findings of Fact 4(m) above, Respondents International and Local 22, on or about June 3, 1963, and on or about July 2, 1963, told Armstrong, Johns-Manville, and Houston Insulation and its other Member Employers that no fabricated fittings or other fabricated items would be installed by employee members of Respondents on any construction projects engaged in by the aforesaid employers unless said fabricated fittings or other fabricated items included thereon a label or "decal" signifying them to be products made by employee members of Respondents.
- (q) As a result of Respondents' acts and conduct aforesaid, as set out in Findings of Fact 4(m), (n), (o) and (p) above, the employees of Armstrong refused in the course of their employment to handle or install Thorpe's product, and the employees of Johns-Manville refused in the course of their employment to handle or install Techalloy's product.
- (r) By the acts and conduct set forth in Findings of Fact 4(m), (n), (o), (p) and (q) above, and by other means, including picketing, orders, directions, instructions, re-

quests and appeals, Respondents have engaged in, and have [fol. 250] induced and encouraged individuals employed by Armstrong, Johns-Manville, and by other persons engaged in commerce or in industries affecting commerce, to engage in, strikes or refusals in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on goods, articles, materials, or commodities or to perform services, and have threatened, coerced and restrained Armstrong, Johns-Manville, and other persons engaged in commerce or in industries affecting commerce.

- (s) An object of the acts and conduct of Respondents set forth in Findings of Fact 4(m), (n), (o), (p), (q) and (r) above, was and is to force or require Armstrong, Johns-Manville, and other persons, to cease using, selling, handling, transporting, or otherwise dealing in the products of and to cease doing business with Thorpe and Techalloy.
- (t) The acts and conduct of Respondents set forth in Findings of Fact 4(m), (n), (o), (p), (q), (r) and (s) above, occurring in connection with the operations of Armstrong, Johns-Manville, Thorpe and Techalloy, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to and do lead to labor disputes burdening and obstructing commerce [fol. 251] and the free flow of commerce.
- 5. It may fairly be anticipated that, unless enjoined, Respondents will continue and repeat the acts and conduct set forth in Findings of Fact 4(m), (n), (o), (p), (q), (r), (s) and (t) above, or similar or like acts and conduct.

Conclusions of Law

- 1. This Court has jurisdiction of the parties and of the subject matter of this proceeding, and under Section 10(1) of the Act is empowered to grant injunctive relief.
- 2. There is, and petitioner has, reasonable cause to believe that:

- (a) Respondents are labor organizations within the meaning of Sections 2(5), 8(b) and 10(l) of the Act.
- (b) Armstrong, Johns-Manville, Therpe and Techalloy are engaged in commerce within the meaning of Sections 2(6) and (7) of the Act.
- (c) Respondents have engaged in unfair labor practices within the meaning of Section 8(b)(4)(i) and (ii), subparagraph (B), of the Act, affecting commerce within the meaning of Sections 2(6) and (7) of the Act, and a continuation of these practices will impair the policies of the Act [fol. 252] as set forth in Section 1(b) thereof.
- 3. To preserve the issues for the orderly determination as provided in the Act, it is appropriate, just and proper that, pending the final disposition of the matters herein involved pending before the Board, Respondents, their officers, representatives, agents, servants, employees, attorneys, and all members and persons acting in concert or participation with them, be enjoined and restrained from the commission, continuation, or repetition, of the acts and conduct set forth in Findings of Fact 4(m), (n), (o), (p), (q), (r), (s) and (t) above, acts or conduct in furtherance or support thereof, or like or related acts or conduct the commission of which in the future is likely or may fairly be anticipated from Respondents' acts and conduct in the past.

Done at Houston, Texas, this 13th day of September, 1963.

Joe Ingraham, United States District Judge.

APPENDIX TO PETITION

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION
Civil No. 63-H-452

CLIFFORD W. POTTER, Regional Director of the Twenty-third Region of the National Labor Relations Board, for and on behalf of the National Labor Relations Board, Petitioner,

V

International Association of Heat and Frost Insulators and Assestos Workers, AFL-CIO,

and

LOCAL 22, INTERNATIONAL ASSOCIATION OF HEAT AND FROST INSULATORS AND ASSESTOS WORKERS, AFL-CIO,

and

LOCAL 113, INTERNATIONAL ASSOCIATION OF HEAT AND FROST INSULATORS AND ASBESTOS WORKERS, AFL-CIO, Respondents.

ORDER GRANTING TEMPORARY INJUNCTION— September 13, 1963

This cause came on to be heard upon the verified petition of Clifford W. Potter, Regional Director of the Twenty-third Region of the National Labor Relations Board, for [fol. 254] and on behalf of said Board, for a temporary injunction pursuant to Section 10(1) of the National Labor Relations Act, as amended, pending the final disposition of the matters involved pending before said Board, and upon the issuance of an order to show cause why injunctive re-

lief should not be granted as prayed in said petition. The Court, upon consideration of the pleadings, evidence, briefs, argument of counsel, and the entire record in the case, has made and filed its Findings of Fact and Conclusions of Law, finding and concluding that there is reasonable cause to believe that Respondents have engaged in, and are engaging in, acts and conduct in violation of Section 8(b) (4)(i)(ii)(B) of said Act, affecting commerce within the meaning of Sections 2(6) and (7) of said Act, and that such acts and conduct will likely be repeated or continued unless enjoined.

Now, therefore, upon the entire record, it is

Ordered, Adjudged and Decreed that, pending the final disposition of the matters involved pending before the National Labor Relations Board, Respondents International Association of Heat and Frost Insulators and Asbestos Workers, AFL-CIO; Local 22, International Association of Heat and Frost Insulators and Asbestos Workers, AFL-CIO; and Local 113, International Association of Heat and Frost Insulators and Asbestos Workers, AFL-CIO; their officers, representatives, agents, servants, employees, [fol. 255] attorneys, and all members and persons acting in concert or participation with them, be, and they hereby are, enjoined and restrained from:

In any manner or by any means, including picketing, orders, directions, instructions, requests, or appeals, however given, made or imparted, or by any like or related acts or conduct, or by permitting any such to remain in existence or effect, engaging in, or inducing or encouraging any individual employed by Armstrong Contracting and Supply Corporation (herein called Armstrong), and Johns-Manville Sales Corporation (herein called Johns-Manville) to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any service, or in any manner or

by any means, threatening, coercing, or restraining Armstrong, Johns-Manville; or any other person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is to force or require Armstrong, Johns-Manville, or any other person, to cease using, selling, handling, transporting, or otherwise dealing in the products of or to cease doing business with Thorpe Products Company, Division of J. T. Thorpe Company, Inc., and [fol. 256] Techalloy Company, Incorporated.

Done at Houston, Texas, this 13th day of September, 1963.

/s/ JOE INGRAHAM, United States District Judge.

[fol. 257] CLEBE'S NOTE:

"Trial Examiner John F. Funke's Decision, February 3, 1964 with Appendices A & B" is omitted from the record here as it appears on pages 176-192, supra.

[fol. 281] CLEBE'S NOTE:

"Decision and order, September 4, 1964" is omitted from the record here as it appears on pages 197-204, supra.

[fol. 292] CLERK'S NOTE:

"Trial Examiner John F. Funke's Decision, February 3, 1964 with Appendices A & B" is omitted from the record here as it appears on pages 176-192, supra.

[fol. 312]

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 21910

Houston Insulation Contractors Association, Petitioner, versus

NATIONAL LABOR RELATIONS BOARD, Respondent.

OPINION ON PETITIONER'S MOTION FOR STAY AND RESTRAINING
ORDER—December 8, 1964

Before Rives, Brown and Wisdom, Circuit Judges.

Brown, Circuit Judge: Petitioner (Houston Insulation) in connection with its Petition for Review, moves for an order staying the decision and order of the Board, dated September 4, 1964, and for a restraining order against the Union (International Ass'n of Heat and Frost Insulators, and Locals 22 and 113 thereof) pending a determination of the issues involved in a full dress review by this Court. We have concluded that the stay should be granted [fol. 313] and that the motion for the restraining order should be denied.

Petitioner charged the Union with engaging in a secondary boycott in violation of §8(b)(4)(i) and (ii)(B). At the behest of the Board's Regional Director acting under §10(1) (which empowers him to seek appropriate injunctive relief), Judge Ingraham of the Southern District of Texas, after conducting a full hearing, found and concluded that there was reasonable cause to believe that the Union was engaging in unlawful conduct. Accordingly, the Union Respondents were enjoined from refusing to handle materials for nonunion contractors on jobs being performed by members of the Petitioner-Association, pendExaminer agreed with the Regional Director and the District Court finding the two Locals—but not the International—guilty of an unlawful secondary boycott and recommended that a cease and desist order be issued. The Board however—apparently as a matter of law, not one of credibility choices—took the view that the Union had engaged only in protected primary activity and ordered the complaint dismissed. The Petitioner thereupon instituted this proceeding seeking reversal of this decision. In the course of this motion for interim relief, the General Counsel has expressed the purpose of seeking formal dissolution of the District Court temporary injunction.

Setting forth a persuasive showing of a substantial basis for its legal contentions as they bear on the likelihood of ultimate success in this Court on the legal issue of the [fol. 314] propriety of the Board's order and a convincing demonstration of irreparable harm in the meantime if the Union is allowed to resume the complained of activity, Petitioner asks that the Board's order be stayed, and an

injunction pending appeal be entered.

Under the Act there can be no real question about the power of this Court to stay an order of the Board. The procedures governing a Board petition for enforcement to a Court of Appeals are set out in §10(e). The parallel section, 10(f), grants to "any person aggrieved by a final order of the Board" the right to petition for review in a Court of Appeals. Recognition of the Court's power to enter a stay order in a proceeding of either kind is then expressly made in §10(g):

"(g) The commencement of proceedings under subsection (e) or (f) of this section shall not, unless specifically ordered by the court, operate as a stay of the Board's order." (Emphasis supplied)

Actually no serious contest seems to be made by the Board on the issuance of a stay. The Board has, Pather, focused

its attention primarily on the asserted lack of jurisdiction in this Court to enter a restraining order at the instance of a private party. The Court's power to enter a stay [fol. 315] being clear under the Act, the only question is whether this is an appropriate case for an exercise of that power.

After a thorough examination of the papers filed by all parties, consideration of the proceedings in the District Court and those before the Trial Examiner and Board, we have concluded, without intimating how the issues should be resolved by a panel of this Court, that there is sufficient merit to Petitioner's position to justify preserving the status quo until the case is finally disposed of in this Court. Were Petitioner to ultimately prevail, the beneficial effect of our decision would largely be vitiated, if while awaiting hearing and disposition, the Union were permitted to resume its activities.

Without now undertaking to determine whether, as urged by the Board's brief, these wide grants of power necessarily confine interim relief to that sought by the Board, not a private party, it is evident that the following from §§10(e) and (f) go a long way to reinforce the power to grant a stay implied in §10(g).

"(e) " " Upon the filing of such petition, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper " " "

"(f) . • • Upon the filing of such petition, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper • • •."

Likewise §10(h) reflects the policy that when courts under this structure are given power to issue restraining orders, etc., the Norris-LaGuardia Act, 29 USCA §§101 et seq., is not to be a bar.

² It is unnecessary to consider whether, apart from the Act, the Court has an inherent power to enter a stay. Cf. 28 USCA §1651.

The effect of the stay is such that it is not necessary for this Court—assuming, but not deciding, that it has the power—to issue an injunction in order to preserve the status quo. While it is true that ordinarily a \$10(1) injunction expires upon final adjudication by the Board, our staying the Board's order effectually postpones its operative legal effect until enforced by this Court. Therefore [fol. 316] Judge Ingraham's order granting a temporary injunction which was to run "pending the final disposition of the matters involved," and which the records of the District Clerk show to be subsisting, remains in full force and effect so long as our stay continues. No further relief is needed or appropriate.

Accordingly, a stay will be entered as of the date of the

application. Stay Granted.

Rives, Circuit Judge, Dissenting:

The majority makes clear that the so-called "stay" which it grants is intended to have the force and effect of an injunction. I must respectfully dissent because that seems to me beyond the jurisdiction of this Court.

The Norris-LaGuardia Act² deprives the courts of the United States of jurisdiction to issue any restraining order or temporary or permanent injunction in a case such as

³We do not read this language as going beyond the permissible scope of an injunction under §10(1)—"appropriate injunctive relief pending the final adjudication by the Board."

¹ See the concluding two paragraphs of Judge Brown's opinion.

The opening section of that Act reads:

[&]quot;No court of the United States, as defined in this chapter, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this chapter; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this chapter." 29 USCA §101.

this involving or growing out of a labor dispute, unless that jurisdiction has been subsequently conferred by the Labor Management Relations Act. See Sinclair Refining [fol. 317] Co. v. Atkinson, 1962, 370 U.S. 195, 203. When granting appropriate relief provided in section 10 of the latter Act, it is expressly provided that ".... the jurisdiction of courts sitting in equity shall not be limited by sections 101-110 and 113-115 of this title." 29 U.S.C.A. 160(h). However, as the Supreme Court observed in Sinclair Refining Co. v. Atkinson, supra, that Act permits "injunctions to be obtained, not by private litigants, but only at the instance of the National Labor Relations Board " (370 U.S. at 204). See also Amazon Cotton Mill Co. v. Textile Workers Union, 4 Cir. 1948, 167 F.2d 183, 186, 187. Indeed, Congress expressly rejected a provision in section 12 of the House bill "for injunctions at the request of private persons, rather than by the Board, in cases like these."

Of the sections relied on by the majority (its footnote 1), section 10(e) relates to petitions by the Board for enforcement of its order and section 10(f) provides for the grant of temporary relief to the Board but not to a private

litigant. See 29 U.S.C.A. §160(e) and (f).

Jurisdiction to issue injunctive relief in a case of this kind, even on the Board's petition, is strictly limited to the period "pending the final adjudication of the Board with respect to such matter." Section 10(1) of the Act, [fol. 318] 29 U.S.C.A. \$160(1). By its own terms the injunction expired on September 9, 1964, when the Board issued

The only exception is a section not applicable to this case, 29 U.S.C.A. §186(e), which the Court commented "stands alone in expressly permitting suits for injunctions previously proscribed by the Norris-LaGuardia Act to be brought in the federal courts by private litigants under the Taft-Hartley Act...." (370 U.S. 205, n. 19.)

⁴ House Conference Report No. 510, June 3, 1947, on H.R. 3020, U.S. Code Cong. Serv., 80th Cong., 1st Sess. 1947, p. 1164.

its decision and order dismissing the complaint. It seems clear to me that this Court has no jurisdiction to grant the private petitioner's motion for stay and thereby to reinstate the injunction or continue it in force.

I therefore respectfully dissent. [fol. 320]

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 21910

Houston Insulation Contractors Association, Petitioner, versus

NATIONAL LABOR RELATIONS BOARD, et al., Respondents.

ORDER GRANTING PETITIONER'S MOTION FOR STAY AND DENY-ING MOTION FOR TEMPORARY RESTRAINING ORDER—Filed December 8, 1964

Before Rives, Brown, and Wisdom, Circuit Judges.

For the reasons stated in the majority opinion of the Court, rendered this date, It Is Ordered that the application for Stay is Granted as of September 17, 1964, and that the motion for a temporary restraining order be Denied.

Rives, Circuit Judge, Dissents.

[File endorsement omitted]

[&]quot;The final adjudication of the Board" is more limited than "the final disposition of the matters involved," the language of the district court upon which the majority seizes (its footnote 3) to stretch the terms of the injunction. Any such broadening or extension of the statutory language would have far-reaching effects not intended by Congress.

[fol. 321]

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 21910

Houston Insulation Contractors Association, Petitioners,

NATIONAL LABOR RELATIONS BOARD, et al., Respondents.

ORDER—Filed December 8, 1964

Before Rives, Brown, and Wisdom, Circuit Judges.

By the Court:

It Is Ordered that the Motion of the National Labor Relations Board to Strike from the Caption of this Case That Portion Which Names Local 22, International Association of Heat and Frost Insulators and Asbestos Workers, Local 113, International Association of Heat and Frost Insulators and Asbestos Workers; and International Association of Heat and Frost Insulators, AFL-CIO; as Respondents in the above entitled and numbered cause be, and the same is hereby Granted.

IN THE UNITED STATES COURT OF APPRALS

FOR THE FIFTH CIRCUIT

No. 21910

NATIONAL LABOR RELATIONS BOARD, Respondent.

versus

NATIONAL LABOR RELATIONS BOARD, et al., Respondents.

ORDER-Filed February 2, 1965

Before Woodbury, Chief Judge, and Wisdom and Bell, Circuit Judges.

By the Court:

It Is Ordered that the Motion of the International Association of Heat and Frost Insulators and Asbestos Workers, AFL-CIO, and Locals 22 and 113, International Association of Heat and Frost Insulators and Asbestos Workers, AFL-CIO for leave to file brief amicus curiae in the above-entitled and numbered cause be, and the same is hereby Granted.

^{*} Chief Judge of the First Circuit sitting by designation.

[fol. 323]

IN UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Houston Insulation Contractors Association, No. 21910 versus

NATIONAL LABOR RELATIONS BOARD.

MINUTE ENTRY OF ABGUMENT AND SUBMISSION— March 25, 1965

On this day this cause was called, and after argument by W. D. Deakins, Jr., Esq., for Petitioner, and Stephen B. Goldberg, Esq., Attorney, National Labor Relations Board, for Respondent, was submitted to the Court.

[fol. 324]

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 21910

HOUSTON INSULATION CONTRACTORS ASSOCIATION, Petitioner,

NATIONAL LABOR RELATIONS BOARD, Respondent.

Petition for Review of an Order of the National Labor Relations Board Sitting at Washington, D. C.

OPINION-March 9, 1966

Before Woodbury, Wisdom and Bell, Circuit Judges.

[•] Senior Judge of the First Circuit sitting by designation.

Woodbury, Senior Circuit Judge: This is a petition to review and set aside an order of the National Labor Relations Board dismissing a complaint issued upon charges [fol. 325] filed in an association of contractors against two local unions and their parent union.

The petitioner, Houston Insulation Contractors Association, Contractors Association or simply Association, hereinafter, consists of a group of contracting companies in the Houston area banded together for the purpose, interalia, of negotiating and administering collective bargaining agreements with Local 22 of the International Association of Heat and Frost Insulators and Asbestos Workers, AFL-CIO. Article VI of the collective bargaining agreement in force between these parties at the time involved provided in material part: "The Employer agrees that he will not sublet or contract out any work described in Article XIII," which included "preparation" and "application" of coverings for the insulation of hot and cold surfaces such as pipes, boilers, tanks etc.

Johns-Manville Sales Corporation is a member of the Contractors Association. In 1963 it was engaged in applying insulation to pipe at a construction project at Texas City, Texas, within the territorial jurisdiction of Local 22. In order to secure the insulation to the pipe Johns-Manville's employees cut coils of stainless steel sheets into strips or bands used to hold the insulation around the pipe. In June or July Johns-Manville purchased pre-cut stainless steel bands from Techalloy Company, Inc., a non-union producer of metal products. Johns-Manville employees at the direction of their union officers refused to apply the pre-cut bands.

Armstrong Contracting and Supply Corporation is another member of the Contractors Association. In 1963 it [fol. 326] was engaged in applying asbestos insulation to pipes at a construction project in Victoria, Texas, which is not within the territorial jurisdiction of Local 22, but of Local 113 of the International Union. For several years

Armstrong had purchased straight lengths of premoulded asbestos insulation from Thorpe Products Company, a non-union firm, which Armstrong's union employees had mitered, that is to say, cut at angles with a saw and glued the cut sections together so that the straight-length material could be used to cover curves or angles in pipe. Originally mitering had been done on the job with hand tools. At the time involved, however, and apparently for several years before, mitering had been done in Armstrong's shop in Houston by its employee-members of Local 22 using power tools inconvenient to move and the mitered fittings delivered to the jobsite. In the summer of 1963 Armstrong purchased pre-mitered fittings from non-union Thorpe Products Company. Armstrong's employees on the Victoria job, members of Local 113, at their union officers' direction refused to apply these pre-mitered fittings.

The Contractors Association filed charges against the International Union and its Locals 22 and 113 on which general counsel for the Board issued a complaint charging that the refusals to apply the goods of Thorpe and Techalloy constituted an unlawful secondary boycott within the meaning of §8(b)(4)(i) and (ii) (B) of the National Labor Relations Act as it now stands amended, 29 U.S.C. § 158(b) (4)(i) and (ii) (B), asserting that at least "an object" of

¹ "It shall be an unfair labor practice for a labor organization or its agents—

[&]quot;(4) (i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce . . . , to engage in, a strike or refusal in the course of his employment to use, . . . process, . . . or otherwise handle or work on any goods, articles, materials, or commodities . . . or (ii) to threaten, coerce, or restrain any person engaged in commerce . . . where in either case an object thereof is . . .

[&]quot;(B) forcing or requiring any person to cease using, handling, ... or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, ... Provided, That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing; ..."

[fol. 327] the refusal to apply, which admittedly amounts to coercion, was to require Johns-Manville and Armstrong to cease doing business with Thorpe and Techalloy. The International Union and the Locals denied that the refusals to use and apply the products of Thorpe and Techalloy constituted a secondary boycott. They asserted that the refusals were protected primary activity because the sole object thereof was to preserve work their members were entitled to perform by virtue of the ban on subcontracting in the collective bargaining agreement.²

After hearing, the trial examiner found that "this was not a boycott of nonunion products." And he ruled that "Articles VI and XIII of the agreement with the Contractors Association are lawful." Nevertheless he concluded that the refusal to handle Thorpe and Techalloy products was unlawful wherefore he recommended a cease and desist [fol. 328] order against the local unions but not against the International Union saying that the dispute was a local one and that he had "no evidence that the International directed it or intervened in it."

The trial examiner rested his conclusion of unlawful activity by the local unions on §8(e) of the Act, 29 U.S.C. §158(e), quoted in material part in the margin. OHe said

In the contract between Local 22 and the Contractors Association the employers agreed that in their operations outside the chartered territory of Local 22 they would abide by the rates of pay, rules and working conditions established by collective bargaining contracts between local insulation contractors and the local union in that territory. Local 113's contract with employers operating within its territorial jurisdiction where the work stoppage involving Armstrong's employees occurred contains a ban against subcontracting similar to the one in the contract between the Contractors Association and Local 22.

[&]quot;It shall be an unfair labor practice for any labor organization and any employer to enter into any contract or agreement, ... whereby such employer ceases or refrains or agrees to cease or refrain from handling, using, ... or otherwise dealing in any of the products of any other employer, or to cease doing business with any other person, and any contract ... containing such an agreement shall be to such extent unenforcible and void: Provided,

that the agreement between the Contractors Association and Local 22 was "clearly a contract aimed at the exemption of Section 8(e)." But he said that the exemption did not apply because the evidence was clear that mitering and cutting bands, even when performed by Armstrong and Johns-Manville employees, was performed at their shops and not at the jobsite. In addition he ruled that, even if the workers were entitled to preserve the work of mitering and cutting bands by the contract, they were not entitled under the rule of the so-called Sand Door case, Local 1976, United Brotherhood of Carpenters v. NLRB, 357 U.S. 93 (1958), to resort to economic coercion to enforce the contract.

The three-member panel to which the Board delegated its powers pursuant to §3(b) of the Act disagreed with the trial examiner and ordered the complaint dismissed [fol. 329] in its entirety. Without discussing the impact of §8(e) of the Act, although that section provided the basis for the trial examiner's decision, the panel held that the activities of the two local unions were primary because "the object" thereof was to enforce the ban on subcontracting work properly claimed by the employees under the collective bargaining agreement the lawfulness of which it said appeared to be conceded. On the basis of its conclusion of no unlawful activity by the local unions, it dismissed the complaint as to the International Union.

One member of the panel dissented from the order insofar as it dismissed the charge against Local 113. The majority of the panel pointed out that although Local 113had no contract with the Contractors Association, nevertheless the Association had agreed with Local 22 that its member companies when operating outside the territorial jurisdiction of that union would "abide by the rates of

That nothing in this subsection shall apply to an agreement between a labor organization and an employer in the construction industry relating to the contracting or subcontracting of work to be done, at the site of the construction, . . . "

pay, rules and working conditions established by collective bargaining agreements between the Local (sic) insulation contractors and the local union in that jurisdiction" and that Local 113's contract in its jurisdiction contained a ban on subcontracting identical with that in Local 22's contract with the Association. Wherefore the majority held that whether Local 113 be "regarded as a third-party beneficiary of Local 22's bargaining contract or as agent of Local 22, it had the right to insist, in accordance with the terms of the contract, that Armstrong adhere to the lawful no-subcontracting clause." The dissenting member of the panel said that Local 113 was not a third-party beneficiary of Local 22's bargaining contract with Armstrong and that there was nothing to show that it was [fol. 330] acting as agent for Local 22. He considered that since Local 113 had no agreement with the Contractors Association, its attempt to enforce the contract for the benefit of Local 22 constituted unlawful secondary activity.

The petitioner insists in this court that both the facts and the law require the Board to find that all three unions

had violated & S(b)(4)(i) and (ii)(B) of the Act.

On the facts, the petitioner contends that the record conclusively shows that "an object" of the refusals to apply was to force Johns-Manville and Armstrong to cease doing business with Techalloy and Thorpe. In support of this contention it would have us give conclusive effect to the testimony of one Brooks Baker, an officer of Local 22 and vice-president of the International Union, who at one point testified that he had instructed the men not to handle the products of Thorpe and Techalloy because "we are not in agreement with Thorpe or Techalloy." This testimony does indicate that Baker at least may have believed that "an object" of the refusals to handle and apply was to force Johns-Manville and Armstrong to cease doing business with Thorpe and Techalloy. But the Board was not required as a matter of law to accept Baker's statement as gospel in the face of ample testimony, including later testimony of Baker himself, to the effect

that the unions' objective was work preservation and in the face of the undisputed testimony that although Thorpe and Techalloy were non-union employers, neither local union had ever protested the use or application of any of their other products purchased by Johns-Manville or Armstrong but only protested the pre-cut bands and pre-mitered [fol. 331] fittings. It may well be that the union officials hoped and expected, certainly we may assume that they would not have minded, if a result of their members' refusal to use and apply the bands and fittings was to put pressure on Techalloy and Thorpe as non-union employers. But hopes and expectations do not necessarily constitute "objects." An illegal "object" is something more than a result, even an inevitable result, of a work stoppage for a legitimate reason. Otherwise the right to strike would for practical purposes be nullified, a result which Congress clearly did not intend. See Retail Clerks Union Local 770 v. NLRB, 296 F.2d 368, 373 (C:A.D.C. 1961). The distinction to be drawn as best one can is between an object and a consequence. See Local 761, International Union of Electrical Workers v. NLRB, 366 U.S. 667, 672 et seq. (1961).

The petitioner also would have us find conclusive evidence of an unlawful union object in its use of gummed labels or decals. These were supplied by the International Union to employers under contract with its locals and were applied by the union workers to the goods they made. The decals bore serial numbers by which the employer could be identified. When Johns-Manville and Armstrong employees received the Techalloy bands and Thorpe mitered

fittings without decals they refused to apply them.

The use of decals is in itself a neutral fact. The decals could be used as a means of boycotting non-union goods or they could be used as a means of policing the ban on subcontracting. There is ample testimony in the record to support the conclusion that in this case the decals were used to police the ban on subcontracting. Moreover, there is undisputed testimony that other products of Thorpe and [fol. 332] Techalloy purchased by Armstrong and Johns-

Manville, which of course did not bear union decals, were not boycotted, and there is testimony that certian products made by union members and labeled as such were not applied when the serial numbers on the decals indicated that the products were not fabricated by employees entitled to the work under the contract.

Finally the petitioner relies on four other cases involving the same International Union and various of its locals as establishing an illegal pattern of union conduct. Apart from the broad proposition that past misconduct is not conclusive evidence of present guilt, the cases relied upon are clearly distinguishable. Three of them, International Association etc. and Local 24 (Speed-Line Mf'g Co., Inc.), 137 NLRB 1410 (1962); International Association etc. and Local 125 (Insul-Caustic Corp.), 139 NLRB 659 (1962), and International Association and Local 2 (Speed-Line Mf'g Co., Inc., and Fibrous Glass Products, Inc.), 139 NLRB 688 (1962), involved "premolded" fittings, not "prefabricated" ones as in the case at bar. The distinction. as the Board pointed out, is crucial, for prefabricated fittings are essentially hand made and could and customarily had been prepared by members of International's local unions, whereas premolded fittings are factory made with the use of heat and heavy machinery to produce curved or "L" shaped insulation. Neither Thorpe nor Armstrong makes or has the facilities to make premolded fittings. Nor do the members of the locals have the skills to make such fittings. Thus in the cases cited above the Board quite reasonably concluded that in objecting to the use of premolded fittings the unions were not in fact seek-[fol. 333] ing to obtain work claimable under their contracts but instead were objecting to the non-union status of the manufacturers of the premolded fittings.

The fourth case relied upon by the petitioner was decided by the Board subsequent to the case at bar and involved the same parties. Local 22 International Association etc. and Houston Insulation Contractors Association (Mundet Cork Co.), 150 NLRB 156 (1965). In that case

members of Local 22 employed by Mundet Cork Co. refused to apply aluminum jacketing supplied by Johns-Manville ostensibly because it did not bear the union decal although in fact it had been made by union labor. The case is a peculiar one but it is readily distinguishable on the trial examiner's finding that the particular aluminum jacketing made by Johns-Manville had never been made and could not have been made by the Mundet employees and hence was not work within the contractual ban on subcontracting.

On the law, the petitioner relies primarily upon §8(e) of the Act quoted in material part in footnote 3, supra. It asserts and we agree that the proviso exempting subcontracting jobsite work in the construction industry does not apply because the Board did not disturb the trial examiner's finding that the mitering and cutting of bands, even when performed by Armstrong and Johns-Manville employees, was performed in their shops and not at the jobsite. But we do not agree with the petitioner that §8(e) absent its proviso renders the contractual ban on subcontracting unenforcible and void.

[fol. 334] It is, of course, true that the agreement not to subcontract the work of preparation or application of insulation materials is in a certain sense an agreement whereby the employer agrees to refrain from handling, using or otherwise dealing in the products of another employer, if not also an agreement not to do business with another person. But to hold that a provision in the collective bargaining agreement against subcontracting was void and unenforcible because of its secondary effects would not square with Fibreboard Corp. v. NLRB, 379 U.S. 203 (1964). in which the Court held that "contracting out" work previously performed by members of an existing bargaining unit was a statutory subject of collective bargaining under §8(d) of the Act. Section 8(e) was aimed at so-called "hot cargo" agreements whereby a union in effect forced employers to agree in advance not to do business with other employers with whom the union was not in agreement. It was not the congressional purpose to outlaw such traditional and typical activity as seeking to guarantee preservation of work traditionally done by a bargaining unit. NLRB v. Joint Council of Teamsters No. 38, 338 F.2d 23, 28 (C.A. 9, 1964), and cases cited. In short, § 8(e) applies only to those agreements which on their face require an employer to cease or refrain from handling, using or otherwise dealing in the products of another employer with whom the union has a dispute. "Primary subcontracting claims, on the other hand, fall outside the ambit of §8(e) " Orange Belt District Council of Painters. No. 48 v. NLRB, 328 F.2d 534, 537, 538 (C.A.D.C. 1964). An agreement banning the subcontracting of preparation work such as the one in the case at bar, not being a "hot [fol. 335] cargo" agreement or on its face an attempt at a secondary boycott in futuro, § 8(e) does not apply.

We agree with the Board's dismissal of the complaint as to Local 22. We do not, however, agree with its dis-

missal of the complaint as to Local 113.

The problem presented by the refusal of the members of Local 113 to apply the pre-mitered fittings is so far as we know unique. As we have already pointed out Local 113 had no contract with Armstrong, although the Contractors Association of which Armstrong was a member had a contract with Local 22 which provided that members when operating outside the Local's jurisdiction "abide by the rates of pay, rules and working conditions established by collective bargaining agreements between the Local (sic) insulation contractors and the local union in that jurisdiction" and Local 113's bargaining contract in its jurisdiction contained a ban on subcontracting identical with that in Local 22's contract with the Contractors Association. On this basis the Board held that "Whether Local 113 is regarded as a third-party beneficiary of Local 22's bargaining contract or as agent of Local 22 it had the right to insist, in accordance with the terms of the contract, that Armstrong adhere to the lawful no-subcontracting clause." We do not agree.

The record is clear, as the trial examiner found, that mitering fittings would not have been done by members of Local 113 at the jobsite in Victoria, Texas, but would have been done by members of Local 22 employed by Armstrong at its shop in Houston. Thus the third party [fol. 336] beneficiary theory is inapplicable because Local 113 would not have reaped any benefit from Local 22's contract. The agency theory has no factual support in the record. Moreover, we think the question presented by the behavior of Local 113 is not to be framed in terms of principles of the law of contracts or agency, developed in other contexts for other purposes. The fact of the matter is that Local 113 put economic pressure on an employer with whom it had no collective bargaining agreement to secure benefits to employees in another unit, Local 22. The question is whether such action by Local 113 comports with the underlying purposes and objectives of the Act. We think it does not.

Since Local 113 was not attempting to procure work for its members (they would not have done the mitering anyway) if it was not attempting to force Armstrong to cease and refrain from doing business with Thorpe, it was engaging in a controversy not its own but in Local 22's controversy with Armstrong. No doubt Local 113 had an emotional interest in coming to the aid of its sister local. But it had no economic interest in Local 22's claim of breach of contract. We think an emotional interest is too weak to justify conduct which necessarily has coercive impact on a neutral employer. Even if, strictly speaking, Local 113 was not engaged in a secondary boycott, it was coercing Armstrong not for its own benefit but for the benefit of another local at the expense of a neutral employer. We think the thrust of the Act, particularly §8(b)(4), as set out in many secondary boycott cases is

See NLRB v. Denver Bldg. Council, 341 U.S. 675, 692 (1951), in which the Court described the congressional objectives of the Act as "... of preserving the right of labor organizations to bring pressure to bear on offending employers in primary labor disputes and of shielding unoffending employers and others from pressures in controversies not their own.

[fol. 337] to require each union to restrict its economic coercion to its own labor disputes and not to use that

weapon in aid of another union.

Since we are affirming the order of the Board in part and reversing it in part the basis for the Board's declining to pass on the involvement of the International Union, i.e., its finding that neither local had violated the Act, is destroyed. The case must go back to the Board for decision of the question of the International Union's participation in Local 113's work stoppage.

The Order of the Board is enforced in part and reversed in part, and the case is remanded to the Board for further

proceedings consistent with this opinion.

[fol. 338]

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 21,910

Houston Insulation Contractors Association, Petitioner,

V.

NATIONAL LABOR RELATIONS BOARD, Respondent.

DECREE-Entered March 31, 1966

Before: Woodbury, Wisdom and Bell, Circuit Judges. By the Court:

This Cause came on to be heard upon a petition of the Houston Insulation Contractors Association to review and set aside an order of the National Labor Relations Board issued on September 4, 1964, dismissing a complaint against

[File endorsement omitted]

Senior Judge of the First Circuit sitting by designation.

International Association of Heat and Frost Insulators and its Locals 22 and 113. The Court heard argument of respective counsel on March 25, 1965, and has considered the briefs and transcript of record filed in this cause. On March 9, 1966, the Court, being fully advised in the premises handed down its opinion affirming the said order of the Board in part and reversing in part, and remanding the case to the Board for further proceedings consistent with its opinion. In conformity therewith it is hereby

Ordered, Adjudged, and Decreed by the United States Court of Appeals for the Fifth Circuit that that part of the Board's order dismissing a complaint against Local 22, International Association of Heat and Frost Insulators and Asbestos Workers, AFL-CIO be affirmed and that the part of the order dismissing the complaint against International Association of Heat and Frost Insulators and Asbestos Workers, AFL-CIO, and its Local 113, be reversed.

[fol. 339] It Is Further Ordered, Adjudged and Decreed that the case be remanded to the Board for further proceedings consistent with the opinion of this Court.

Entered Mar 31 1966.

[fol. 340] Clerk's Certificate to foregoing transcript (omitted in printing).

[fel. 341]

No. —, October Term, 1965

NATIONAL LABOR RELATIONS BOARD, Petitioner,

HOUSTON INSULATION CONTRACTORS ASSOCIATION.

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI—June 8, 1966

Upon Consideration of the application of counsel for petitioner,

It Is Ordered that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including August 6th, 1966.

Hugo L. Black, Associate Justice of the Supreme Court of the United States.

Dated this 8th day of June, 1966.

[fol. 342].

Supreme Court of the United States
No. 206—October Term, 1966

Houston Insulation Contractors Association, Petitioner,

NATIONAL LABOR RELATIONS BOARD.

ORDER ALLOWING CERTIORARI—October 10, 1966

The petition herein for a writ of certiorari to the United, States Court of Appeals for the Fifth Circuit is granted, and set for oral argument immediately following Nos. 110 and 111. The case is consolidated with No. 413 and a total of one hour is allotted for oral argument.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 343]

Supreme Court of the United States
No. 413—October Term, 1966

NATIONAL LABOR RELATIONS BOARD, Petitioner,

HOUSTON INSULATION CONTRACTORS ASSOCIATION.

ORDER ALLOWING CERTIORARI—October 10, 1966

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted, and set for oral argument immediately following Nos. 110 and 111. The case is consolidated with No. 206 and a total of one hour is allotted for oral argument.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.